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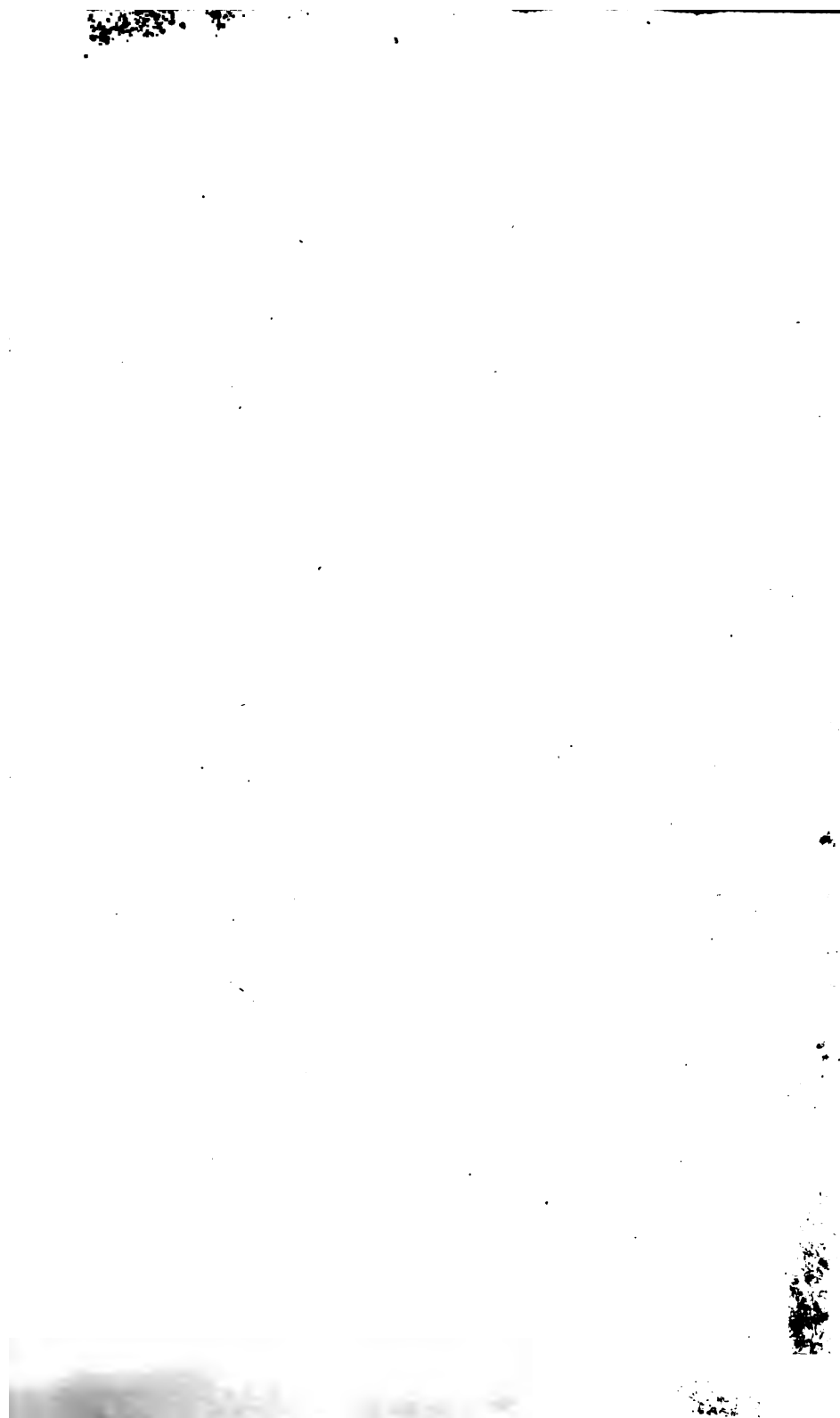


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THE
LAW AND PRACTICE
OF
JUDGMENTS
AND
EXECUTIONS,
INCLUDING
EXTENTS AT THE SUIT OF THE CROWN.

BY PEREGRINE BINGHAM, A. B.
OF THE MIDDLE TEMPLE, SPECIAL PLEADER.

*These points touching Execution,
which is the Life of the Law,
are especially necessary to be known.*
5 Rep. 89.

LONDON:
PRINTED FOR J. BUTTERWORTH AND SON, FLEET STREET;
AND J. COOKE, ORMOND QUAY, DUBLIN.

1815.

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THE LAW AND PRACTICE

OF

JUDGMENTS.

CHAPTER I.

Of Judgments generally, and the Writ of Inquiry.

A JUDGMENT is the decision or sentence of the law, given by a court of justice, as the result of proceedings instituted therein, for the redress of injury.

The language of judgments, therefore, is not that “it is *decreed* or *resolved* by the court; but, “it is *considered*,” (*consideratum est per curiam*) that the plaintiff do recover his debt, damages, possession, and the like, or that the defendant do go quit; which implies, that the judgment is not so much the decision of the court, as the sentence of the law pronounced and declared by the court, after due deliberation and enquiry.

Judgments in civil cases are of four kinds :

1. Where the facts are admitted by the parties, but the law disputed ; as in case of judgment upon a *demurrer*.

2. Where the law is admitted, but the facts disputed ; as in case of judgment upon a *verdict*.

3. Where both the fact and the law are admitted by *confession*; as in a "*Cognovit actionem*," or "*retraxit*," on the part of the defendant; or, "*Nolle Prosequi*," on the part of the plaintiff.

4. By *default* (a) of either party in the course of legal proceedings; as in cases of judgment by "*Nil dicit*," or "*non sum informatus*," where the defendant has omitted to plead or instruct his attorney to do so, after proper notice given; or in cases of judgment by "*non-pros*," "*nonsuit*," or, "as in case of a nonsuit," where the plaintiff omits to follow up his proceedings. The conduct of the defendant implies, that he has no defence to offer; that of the plaintiff, that he has no grievance which he can prove.

These four species of judgments, again, are either *Interlocutory*, or *Final*.

1. Interlocutory judgments are, in ordinary acceptance, (b) those incomplete decisions, whereby

(a) Blackstone makes the third species consist of judgments by confession, or default; and the fourth, of judgments upon a nonsuit, or retraxit. 3 Comm. 396.

(b) For there is one interlocutory judgment, which establishes nothing but the inadequacy of the defence set up. This is, the judgment for the plaintiff on demurrer to a

plea in abatement; by which it only appears, that the defendant has mistaken the law on a point which does not affect the merits of his case; and it being therefore but reasonable, that he should offer, if he can, a further defence, the judgment is, "that he do answer over;" in technical language, judgment of "*respondeat ouster*."

the right of the plaintiff is established ; but the *quantum* of damages sustained by him is not ascertained ; for this is a matter, which in general cannot be fairly done without the intervention of a jury.

2. Final judgments are such as at once finish the proceedings, by declaring that the plaintiff either has, or has not, entitled himself to recover the remedy he sought, and by ascertaining to what amount he shall obtain redress.

It will appear, then, that judgments after verdict, judgments in the action of " Debt " for a sum certain, judgments by confession, and all judgments in favour of the defendant, (c) are *Final* ; but, in every other case, as on default or demurrer in actions of assumpsit, covenant, case, trespass, trover, &c. the judgment is *Interlocutory* in the first place ; deciding only that the plaintiff *ought* to recover ; but leaving it to be ascertained, by a writ of inquiry, to what amount. On the return of this inquiry, the right to recover having been established, and the amount of the damages having been ascertained by a jury, final judgment is entered up.

It will be requisite, before proceeding further, clearly to shew the nature and objects of a writ of inquiry.

A writ of inquiry, then, is an inquest of office to inform the conscience of the court ; who, if

(c) Except in " Replevin." See post.

they please, may themselves assess the damages. (d) Hence a practice is now established in the courts of K. B. and C. P., in actions upon promissory notes, and bills of exchange, &c. to apply to the court in term time, or to a judge in vacation, (e) on an affidavit of the nature of the action, &c. for a summons, or rule, to shew cause why it should not be referred to the master in the K. B., or prothonotaries in C. P., to see what is due for principal and interest; and why final judgment should not be signed for that sum, without executing a writ of inquiry: upon this the court or a judge will make an absolute rule, or order, on an affidavit of service, unless good cause be shewn to the contrary. (f)

A similar rule or order may be obtained in actions on covenants for the payment of a sum certain, (g) or on an award. (h) However, this practice is generally confined to cases where it appears, on the declaration, that the action is brought on promissory notes, or bills of exchange; (i) or ac-

(d) 3 Wils. 62. 2 Wms. Saund. 107. (2) 1 H. B. 542. and consequently retain the right of setting aside inquiries for small or excessive damages, and, in some cases, of increasing them. Say, Dam. 173.

(e) 2 Smith R. 46, 7. in note. The application must

be made on a day subsequent to that on which interlocutory judgment is signed. (3 Squith Rep.)

(f) 4 T. R. 275. 1 H. Bl. 541. 2 Bos. and Pul. 45.

(g) Doug. 316. 8 T. R. 326. 410.

(h) Tidd, 568.

(i) 8 T. R. 648.

tions, wherein the amount of damages depends on figures, and may be ascertained as honestly by the master as before a jury:—But the court will refuse to make the rule absolute, in an action on a bill of exchange for *foreign* money, the value of which is uncertain; (k) or in an action of *assumpsit* on a foreign judgment; (l) or in *assumpsit* for a sum certain, due on an agreement. (m) They will refuse it also, to ascertain the damages, in an action of debt on a judgment recovered on a bill of exchange, or in an action on a bottomree bond. (n)

As *final* judgment ascertains both the plaintiff's right, and the quantum of damages sustained by him, it appears, that a writ of inquiry issues *only* after an *interlocutory* judgment, properly speaking. Therefore, though in an action of debt on a bond, conditioned for the performance of covenants or agreements, (o) judgment is en-

(k) Cro. Eliz. 536. 5 T.R. 87.

(l) 4 T. R. 493.

(m) Tidd, 569.

(n) Id. *ibid.*

(o) Contained either in the bond, or a separate instrument (2 Burr. 826.) and bonds for the payment of an annuity, (8 T. R. 126.) or of money by instalments, (6 East, 550.)

or for the performance of an award, (6 East, 613.) are within the statute; but not "post obit" bonds, (2 Camp. 285.) bonds for the payment of money only; nor bailbonds, (2 B. and P. 446.) nor judgment on the issue of "Nul tiel record," or on a warrant of attorney. (2 Taunt. 125.)

tered up nominally for the whole penalty, (*p*) in order that it may stand as a security (under Stat. 8 and 9 W. 3. c. 11. s. 8.) against any future breaches of covenant in the same deed,—

Yet, as the plaintiff is obliged, (*q*) by this statute, specifically to assign, in his declaration or replication, the breaches by which he has sustained damage, or to suggest them on the roll, before or after the issue, (*r*) or judgment by demurrer, default, or confession,—in order that the amount of such damage may be ascertained by a jury, and no more recovered,—it appears, that, wherever such damages *remain* so to be ascertained, the judgment is in reality only interlocutory; “That the plaintiff *ought* to recover,” (*s*) &c.

(*p*) 2 Burr. 825. Cowp. 357.

(*q*) 2 Wils. 377. Cowp. 357.

(*r*) 8 T. R. 255. if omitted after the issue, it seems they may be suggested after verdict. See 2 Wms. Saund. 187. b. and form, post; but, in such case, it may seem, that the plaintiff ought to pay the costs of the writ of inquiry; for the statute was made in favour of defendants, and it arises from the plaintiff's neglect, that the jury, who gave the verdict, had not be-

fore them the suggestions upon which to give also the amount of the damages. Where the issue has been made up and delivered, without the suggestions, it is irregular to deliver a second issue with suggestions, unless after a summons and judge's order, (8 T. R. 255.)

(*s*) 2 Wm. Saunders, 187. b. for if it be entered up in a different manner, the plaintiff will lose the costs of the inquiry. (3 Bos. and Pull. 612.) The defendant cannot *plead* to breaches suggested on the

The writ of inquiry under this statute is executed at the assizes, or sittings; returned by the judge in the nature of a "*postea*;" and final judgment entered up as after a verdict. (1)

There is one case, however, in which a writ of inquiry may issue, without being preceded by an interlocutory judgment. This is where the jury, on the trial of an issue, omit to assess the damages; an omission which, in some instances, may be

roll, (1 Wms. Saund. 58. d.) Where an action is brought on a judgment, the plaintiff may have a writ of inquiry after judgment by default, to recover interest by way of damages for the detention of the debt, (7 T. R. 446. 3 T. R. 395. 1 East, 436.) But it seems, for the reason above stated, that the judgment by default, in this case, should be entered up with an *ought*, and the judgment thereby become interlocutory.

(1) See post, The form of a suggestion entered on the roll after issue joined, and after judgment by demurrer or default, with award of writ of inquiry, return thereof in nature of "*postea*," and final judgment thereon. If the

breaches be assigned in the declaration, or suggested on the roll, as they may be at any stage of the proceedings, *before* judgment by demurrer or default, the award of the writ of inquiry follows those judgments, as it follows interlocutory judgments in actions for damages.

This writ of inquiry is delivered to the sheriff, who summons the jury, and returns the jury process with a panel of the names of the jurors: a copy of the record is then made, including the suggestion, on two shilling stamped paper or parchment, for the chief justice or judge of assize.

The execution of an instrument which the defendant had stated in setting out the condi-

supplied by a writ of inquiry. (u) Wherever, on the trial of an issue, the jury were found to have given a false verdict, the party aggrieved might have proceeded against them (though that practice is now disused) by a writ of "attaint;" which process does not lie on an inquest of office, such as is a writ of inquiry. (x) The party, therefore, would have lost the benefit of proceeding by an attaint, if questions, the unjust decision of which might have given rise to such attaint, were submitted to an inquest of office; consequently, an omission or mistake as to these could not fairly be remedied by a writ of inquiry. But the principal jury, though liable to attaint for a false verdict on the very point of the issue, may decide points collateral to, and connected with, the main issue, without incurring such liability; for as to these collateral points, they act but as an inquest of office.

It is, therefore, only on points collateral to the main issue, that the omission of the principal jury can be supplied by a writ of inquiry. Such are, the four usual inquiries on a "Quare impedit;" and, as it is usual, when there is a demurrer on evidence, to discharge the jury before they have proceeded to assess damages; if, afterwards, judgment is given for the plaintiff, a writ of

tion of the bond in his plea, 157. 1 B. and P. 368.)
 need not be proved on this (u) 10 Rep. 118.
 inquiry, (1 Esp. Ni. Pri. cas. (s) Carth. 362.

inquiry of damages is awarded, though the principal jury might have assessed them conditionally. (y) So, in "trespass," or "replevin," against overseers of the poor acting "virtute officii," if the plaintiff be "nonsuit," (z) or have a verdict against him, (a) and the jury are discharged without inquiring of the treble damages, pursuant to 43 Eliz. c. 2. s. 19. the omission may be supplied by a writ of inquiry. In this case it is necessary to enter a suggestion on the roll, that the defendants were overseers of the poor, and that the action was brought against them for something done by virtue of their office: (b) a rule to shew cause must also be obtained. (c)

But the court has refused to supply the omission by a writ of inquiry, where the jury omitted to assess the value of the goods in an action of "detinue;" nor can it be supplied where they have omitted, upon an issue in "replevin," to inquire of the rent in arrear, and value of the goods or cattle distrained; for by the 17 Car. 2. c. 7. these matters are to be inquired of by the *same* jury that tries the issue. (d) The omission cannot be supplied where no damages are given on trying the traverse of the return to a writ of "mandamus." (e)

If there be judgment by default as to part, and

(y) Cro. Car. 143.

(b) Say. Rep. 214.

(z) 1 Rol. Rep. 272. 1
Salk. 205.

(c) Id. *ibid.*

(d) 1 Salk. 205.

(a) 2 Str. 1021. 3 Wils. 442.

(e) 2 Str. 1052.

an issue on other part ; or if, in an action against several defendants, some of them let judgment go by default, and others plead to issue, there ought to be a special “venire,” “tam ad triandum quam ad inquirendum,” and the jury who try the issue shall inquire the damages for the whole, or against all the defendants. (*f*)

So where there is a demurrer and issue, the jury, who try the issue, shall, if the plaintiff be not nonsuited, (*g*) assess damages, to be contingent on the event of the demurrer.

Due notice must be given of the execution of writs of inquiry. If the “venue” be laid in London or Middlesex, and the defendant live within forty computed (*h*) miles from London, eight days’ notice of inquiry is sufficient, exclusive of the day it is given : (*i*) this notice is also sufficient in country causes. (*k*) But where the venue is laid in London or Middlesex, and the defendant lives above forty computed miles from London, there must be fourteen days’ notice of inquiry, (*l*) Sun-

(*f*) 11 Rep. 5. 2 B. and P. 163.

(*g*) 1 Str. 507.

(*h*) 2 Str. 954. 1215. the writ of inquiry is stamped with a five shilling stamp, signed by the prothonotaries in C. P. and afterwards sealed ; but, in K. B. sealed only. If the proceedings are by “original,” it is made returnable on a ge-

neral return day ; if by “bill,” on a day certain. But in an action by bill against an attorney, the writs being returnable on a general return day, was holden only a miscontinuance, cured by the statutes of “Jeo-fails.”

(*i*) Sty. tit. notice. P. R. 421.

(*k*) Tidd, 576.

(*l*) Ibid.

day is accounted a day in these notices, unless it be the day on which notice is given; (*m*) and it has been determined, that, if a defendant residing at a hotel be arrested, and continue such residence till served with notice of executing the writ of inquiry, eight days' notice shall be sufficient, though his ordinary residence be above forty miles from town. (*n*) So, if he resided in London at the commencement of the action, and, in the intermediate time, removed to a greater distance than forty miles, not having given the plaintiff notice of such removal. (*o*) Where a term's notice of trial would be required, there must, at the same distance of time, be the like notice of inquiry; (*p*) which notice must be given before the essoin day of the fifth, or other subsequent term; and in K. B. it may be given at once without any previous notice of an intention to proceed in the cause. (*q*)

Short notice of inquiry is *two* days at least, (*r*) and the inquiry may be countermanded on two days' notice; or the former notice may be continued over to any other day, but not more than once in a term. (*s*) Where fourteen days' notice of inquiry are requisite, there must be six days' notice of a countermand. (*t*)

In the K. B. if, after the plaintiff has joined is-

(*m*) 8 Mod. 21.

(*n*) 7 East, 624.

(*o*) 12 East, 427.

(*p*) 2 Str. 1100.

(*q*) 3 Smith R. 101.

(*r*) Barnes, 301.

(*s*) 2Str. 1119. Barnes, 292.

(*t*) Tidd, 580.

sue on the defendant's pleadings, and given notice of trial, the defendant, to hinder the trial, demurs, and the plaintiff, after such demurrer, obtains judgment, the attorney for the defendant is obliged to accept notice of executing a writ of inquiry, from the time of giving notice of trial; (*u*) but the plaintiff ought, in such case, to give notice of the hour and place of executing the inquiry. (*x*)

In the C. P. this practice extends to cases where the defendant does not, after notice of trial given, join issue before the rule is out; and where he demurs to the plaintiff's declaration, he must accept notice of executing a writ of inquiry on the back of the joinder in demurrer. So, where he pleads such a dilatory plea as the plaintiff is obliged to demur to; (*y*) and notice may be given on the issue-book, on an issue of "nul tiel record." (*z*)

The notice, which must be in writing, (*a*) may, if the defendant have not appeared, or his attorney be unknown, (*b*) be served on the defendant, by leaving it at his last place of abode. If he have appeared, and his attorney be known, it must be delivered to his attorney; (*c*) in a country cause, to the agent of that attorney, who issues the "sub-pœnas," in the K. B.; (*d*) but, in the C. P., it may be given either to the attorney in the country, or

(*u*) Tidd, 577.

(*x*) Ibid.

(*y*) Ibid.

(*z*) Pr. reg.

(*a*) Tidd, 575.

(*b*) Say. Rep. 133.

(*c*) Ibid.

(*d*) 3 East. 568.

agent in town. (e) In a joint action, the notice ought to be given to both defendants. (f)

Writs of inquiry are usually executed before the under-sheriff; but, in cases of difficulty and importance, the court, on a proper affidavit being made, will order that the writ of inquiry shall be executed before a judge at sittings, or "*nisi prius*;" and then the judge acts as an assistant to the sheriff. (g) When it is to be so executed, the notice should be given for the sittings, or assizes, generally; (h) but otherwise, the notice should express the particular time and place of executing it. (i)

A writ of inquiry may be executed at any time (excepting Sunday) (k) before, or on the day it is returnable. (l) The usual way is to give notice that the writ will be executed *between* two certain hours—as between ten and twelve; but, as the sheriff may have prior business, it will not be an irregularity should he be a little later than the time appointed. (m)

Notice to execute *by* ten, or between ten, or eleven *and* two, has been deemed insufficient, and set aside for uncertainty. (n) But notice of executing inquiry *at* eleven, is good if executed

(e) Barnes, 305.

(f) Pr. Reg. 443.

(g) State Tr. 987.

(h) Barnes, 135.

(i) Say. R. 181.

(k) 1 Str. 387.

(l) 2 Ld. Raymd. 1449.

(m) Doug. 198.

(n) 2 Str. 1142. Barnes,
296.

before twelve; and, in a notice for Tuesday the fourteenth, when the fourteenth fell on a Thursday, the word Tuesday was considered only surplusage. (o)

In London and Middlesex the writ must be left at the sheriff's office the day before the time appointed for execution; and, if either party intends to be provided with counsel, he should give notice to his adversary, or the expence will not be allowed in costs. (p) Witnesses may be "supœnaed" on either side previous to the inquiry; and if the plaintiff do not proceed to execute it according to notice, or countermand in time, the defendant shall have his costs, to be taxed by the master or prothonotary, on affidavit of the necessary attendance and expence. (q)

The inquiry must be executed within the county where the action is laid. In London it is executed at the secondaries' office; in Middlesex, at the sheriffs' office; and, in other counties, at the place appointed for that purpose. The notice is given accordingly, and any defect in the notice is cured by the appearance and defence of the defendant or his attorney, (r) on the execution of the writ.

The inquiry may be adjourned by the sheriff, after it is entered on.

(o) 3 Bos. and Pul. 1.

448.

(p) Tidd, 580.

(r) Barnes, 233.

(q) 2 Str. 728. Pr. Reg.

As judgment suffered by default is an admission of the cause of action, the defendant cannot, on a writ of inquiry, give evidence of any thing which might have been set up as a defence before such judgment ; as that the contract was fraudulent, (s) —that the plaintiff had no interest in an insurance, where there was a stipulation, that the policy should be sufficient proof of interest, (t) &c.

On the return day of the writ of inquiry, the rule for judgment should be given in the K. B. with the clerk of the rules : this rule expires in four days ; (u) and, on such expiration, (x) the sheriff being called on for his return, will give it, with the inquisition, to the plaintiff's attorney, who causes it to be stamped with a ten shilling stamp, and taxes his costs thereon with the master. No rule is given in the C. P. ; but the party waits four days after the return, inclusive of both days.

In that court the inquisition is left with the clerk of the judgments, and is not to be taken out of the office without leave of the court.

During the four days above mentioned, either party may move to set aside the inquisition. The plaintiff, where he has been surprised by contrivance, (y) or the sheriff or jury have been mistaken

(s) 1 Str. 6. 12.

of the interlocutory judgment.

(t) Doug. 315.

(1 Str. 684. 4 East, 173.)

(u) 1 Salk. 399. The writ

(x) Ibid.

of inquiry may be amended, in some instances, by the record

(y) 2 Salk. 647. 1 Str. 515.

in point of law, (z) but not otherwise ; (a) the defendant, for want of notice, (b) objection to the jury, (c) or excessive damages. (d)

The want of a writ of inquiry is aided by the statute of Jeofails ; (e) and where an inquisition was lost, on which costs had been taxed, but no judgment entered up, the court allowed a new writ of inquiry, and inquisition according to the sheriffs' notes. (f)

(z) 1 Str. 425.

(a) Barnes, 230.

(b) Sty. P. R.

(c) Cowp. 112.

(d) 2 Leon. 214.

(e) 2 Str. 878.

(f) Ib, 1077.

CHAPTER II.

Of Judgments by Default.

1. "Non sum informatus," "nil dicit," and in what cases plaintiff is entitled to sign the latter.
2. "Non pros."
3. "Nonsuit."
4. "Judgment, as in case of a Nonsuit."

JUDGMENT goes *by default*, properly speaking, ^(a) wherever, between the commencement of a suit, and its anticipated decision in court, either party omits to pursue in the regular method the ordinary measures of prosecution or defence.

Hence, judgment by default, when it goes against the defendant, is an implied admission of the charges advanced; when it goes against the plaintiff, it is an implied admission that he cannot support those charges.

Judgment by default is either by "Nil dicit," where the defendant appears, but says nothing in bar or preclusion of the action; or by "non sum

(a) For, in ordinary legal acceptance, the term "judgment by default" is applied only to judgments of that nature suffered by the defendant.

informatus," where his attorney says he is not informed of any answer to be given thereto. Judgments of "non pros," "nonsuit," and "as in case of a nonsuit," (which are against the plaintiff,) though usually treated as a class by themselves, must, inasmuch as arising from omissions, or irregularities at various stages of the action, be considered equally judgments by default of the plaintiff, as judgments of "nil dicit," or "non sum informatus," by default of the defendant.

However, the latter will here be first discussed, as constituting "Judgments by Default" in common acceptation, and as occurring at an earlier stage of the proceedings, at least than judgments of "nonsuit," and "as in case of nonsuit."

Judgment by "nil dicit," then, is either for want of any plea at all; for want of a plea adapted to the nature of the action, or circumstances of the case; or for not pleading in a proper manner, or at a proper time.

If, after a rule to plead has been given, and plea demanded, no plea be delivered to the plaintiff's attorney, he should, at the expiration of the rule, if the action be in K. B. search for one with the clerk of the papers, and with the clerk of the judgments, at the King's Bench office, or at the prothonotaries' office, in the Common Pleas: if no plea be found at either of those offices, he may sign judgment as for want of a plea. In like manner may judgment be signed, if the defendant

omit to rejoin, (b) to plead to a new assignment, or join in demurrer when necessary; or, in K. B. if he do not return the paper or demurrer book in due time. But, if the plaintiff neglect to take this advantage, where a plea, &c. is not put in by the day the rule expires, the defendant may deliver his pleadings at any time before judgment is actually signed against him. (c)

If the defendant puts in a plea not adapted to the nature of the action, as “*nil debet*,” in “*assumpsit*,” (d) &c. the plaintiff may consider it as a nullity, and sign judgment; so, if he pleads a sham plea, obviously denoting fictitious proceedings, as a judgment recovered in the court of “*Piepoudre*,” (e) and where the defendant pleaded the statute of additions in abatement, the Court of Common Pleas held the plea a nullity, and gave the plaintiff leave to sign judgment, (f) and said he might have done so without application to the court.

The plaintiff may sign judgment as for want of

(b) 5 T. R. 152.

and, where the matter is doubtful,

(c) 4 T. R. 195. 5 T. R. 35.

it is the safest way to demur; or move the court to

(d) *Barnes*, 257. But the plea of “not guilty,” in an action of debt on a penal statute, is not such a nullity as to authorize the signing of judgment, (1 T. R. 462.);

set the plea aside, in which they will sometimes exercise an equitable discretion. (1 Bos. and Pul. 447.)

(e) 10 East, 237.

(f) 3 Bos. and Pul. 395.

a plea, if the defendant, after craving oyer of a deed, do not set forth the whole of it. (*g*) So, if he plead a judgment recovered, or other plea that is not issuable, (*h*) after a judge's order for time to plead, on terms of pleading issuably. (*i*) So, where the defendant pleads a plea in abatement, without affidavit of the truth of the plea, (*k*) or after the expiration of four days inclusive from the delivery, or filing and notice of declaration ; (*l*) or if he plead a tender without paying the money into court ; (*m*) or if he enters in the general issue-book in the K. B., (*n*) or omits to deliver in form, in the C. P., (*o*) a plea of " *Solvit ad diem*," which ought to be delivered to the plaintiff's attorney.

Judgment may also be signed, as for a nullity, where the defendant pleads before he has appeared, or taken the declaration out of office, (*p*) or before the bail are perfected in aailable cause. (*q*)

But it cannot be signed in a " *qui tam* " action, for entitling the plea with the names of the parties, without the addition of " *qui tam*," &c. to the plaintiff's name : (*r*) nor, if the defendant,

(*g*) 4 T. R. 370.

(*h*) As, that defendant does not owe (five hundred pounds) the sum mentioned in one of the counts, where the declaration is for a larger sum in the action of " *debt*," (3 Bos. and Pul. 174.)

(*i*) 1 Burr. 59. 1 East, 411.

(*k*) Pr. Reg. C. P. 4.

(*l*) 1 T. R. 277.

(*m*) 1 Str. 638.

(*n*) 5 T. R. 661.

(*o*) Barnes, 239.

(*p*) Imp. C. P. 449.

(*q*) Tidd, 352.

(*r*) 7 East, 333.

when under an order to plead issuably, puts in a plea, which, though informal, goes to the substance of the action; (r) and, in the Common Pleas, if the plaintiff take a plea out of the office, and keep it, he cannot afterwards consider it as a nullity, and sign judgment. (s)

The plaintiff may wave a judgment by default; (u) and, if the judgment be irregular, the defendant may move the court to set it aside: but this motion must be made in term-time, or notice given of it in vacation, two days at least before the day appointed for executing the inquiry; and, in the C. P. it seems such motion cannot be made, unless it appear the defendant could not have applied sooner. (x)

A judgment by default may be considered irregular when the defendant, in an action not bailable, has not been served with a copy of process; or, when there has been no declaration regularly delivered or filed, or notice thereof given to the defendant; or when it is signed before the defendant's appearance, or without entering a rule to plead, or demanding a plea when necessary; or after a plea regularly delivered and filed: And when the plaintiff declares, before the defendant has appeared, he cannot sign judgment after plea, for want of his appearance. (y) But if the de-

(r) 5 T. R. 152.

(u) Barnes, 251.

(s) 2 New Rep. 509. But
see Barnes, 252.

(x) Tidd, 564.

(y) Tidd, 563.

defendant accept a declaration, and act as if an appearance had been entered for him, the court will not afterwards permit him to set aside a judgment, on the ground of his not having appeared. (z)

In some cases, even where the judgment by default is regular, if the plaintiff has not lost a trial, the courts, on motion, will set it aside upon an affidavit of merits made by the defendant's attorney; (a) the defendant undertaking to pay the costs, (b) to plead issuably "instanter," (c) take short notice of trial, (d) and give judgment of such term, as to put the plaintiff in the same situation, as if the first judgment had not been set aside: (e) the courts will do this in ejectment, as well as other actions. (f) But they will not set aside a regular judgment, to give the defendant advantage of a nicety in pleading, (g) or to let him in to plead the statute of limitations, (h) or bankruptcy; (i) nor will they set aside an irregular judgment after a "cognovit." (k)

Except in the action of "debt" for a sum cer-

(z) 1 New Rep. 309.

(a) Tidd, 564.

(b) 1 Salk, 402. Barnes, 242.

(c) 6 East, 587. b.

(d) Barnes, 242.

(e) 2 Str. 975. 1 Burr.

568.

(f) 2 Str. 975.

(g) 2 Str. 1242.

(h) 1 Blac. Rep. 35. But see 1 Bos. and Pul. 52. 228.

(i) Tidd, 565. but see 1 B. and P. 52.

(k) 7 T. R. 206.

tain, judgment by default against the defendant is usually interlocutory; and, consequently, succeeded by a writ of inquiry. Interlocutory judgment is signed on fourpenny stamped paper, with the clerk of the judgments in K. B., or prothonotaries in C. P., an "incipitur" being first entered on a roll, of the term, it is signed; and, notwithstanding an old rule in the latter court, judgments are now signed there at any time in the vacation; but, on signing judgments by default, &c. in that court, the warrants of attorney must be filed on unstamped parchment, with the clerk of the warrants, who marks the judgment paper before it is signed by the prothonotaries. (1)

2: Wherever, in the prosecution of an action, it is incumbent on the plaintiff to take certain steps,—and, after having been duly called on for that purpose, he fails to adopt them,—judgment may be entered up against him as the consequence of such default.

Where this omission of the plaintiff has occurred at any stage of the proceedings, before issue is joined, the judgment which follows such omission is called, technically, a judgment of "non-pros." Where the plaintiff fails to make his appearance on being called, after the jury are assembled, the judgment which follows is termed a "nonsuit;" and where, after issue joined, he omits to proceed

(1) Tidd, 566.

to trial in due course, the defendant is allowed, by 14 G. 2. c. 17. to enter up judgment, "as in case of a nonsuit." Of these, each in their order.

Where the defendant has been arrested, or has put in bail, though he never were arrested, nor the process returned, if the plaintiff do not declare within two terms, a "non-pros" may be entered up; (*m*) and this, not only in cases where the writ is defective, but in all cases. (*n*) Hence, on all process in K. B. by bill, or original, if the defendant appear by his attorney, and file bail of the term wherein process is returnable, and the plaintiff do not declare, before the end of the term next following, a "non-pros" may be signed without entering any rule to declare, or calling for a declaration. (*o*) In the Common Pleas, a rule must be entered for the plaintiff to declare, and a declaration demanded, before the end of the second term, or within four days after; and, if the plaintiff do not declare before the rule is out, the defendant may, at any time before the essoin day of the next term, sign a "non-pros," but not afterwards: (*p*) the demand of the declaration must be in writing, (*q*) and, in country causes, must be made on the agent in town; (*r*) and, as a

(*m*) 13 Car. 2. c. 2. s. 3. 349.

2 Salk, 455.

(*p*) Tidd, 350.

(*n*) 7 T. R. 27.

(*q*) Ibid.

(*o*) Gilb. K. B. 345. Tidd,

(*r*) Barnes, 311.

"non-pros" can never be signed, unless bail be filed, or an appearance entered as of the term wherein the process is returnable, (s) it cannot be signed, in such case, for not declaring, where a prisoner is superseded on filing common bail. (t)

In actions by original (where the plaintiff cannot proceed against the defendants severally upon a joint writ) the plaintiff cannot be non-processed by one or more of the defendants without the others; (u) but, upon common process, if the plaintiff proceed against one or more of several defendants, by serving notice of declaration, or taking a rule for further time to declare, and omit to proceed against the others, the latter may sign judgment by "non-pros." (x) In such case, however, there ought to be but one judgment of "non-pros" for all the defendants, unless the plaintiff have manifested his intention of proceeding against them severally. (y)

Where a cause has been removed from one court to another by "habeas corpus," the declaration must be delivered before the end of the second term, after bail has been put in on the "habeas corpus;" and, if the plaintiff do not declare within that time, the defendant's attorney is not bound to accept a declaration, though it

(s) Tidd, 350.

(t) Imp. K.B. 562. 5 T.R.

35.

(u) Doug. 169.

(x) 2 T. R. 257.

(y) 2-Salk. 455.

seems the plaintiff cannot be non-pressed, for want of it! (2)

Where a cause is removed by "pane," or "recordari," if the plaintiff do not declare, the defendant, having entered his appearance, must give a rule to declare, with the master in the K. B., or filacer in C. P.; and if the rule be given on, or before the appearance-day, or return of the writ, there is no necessity for demanding in writing (a) a declaration: otherwise, a written demand must be made. (b) The rule to declare may be served on any day before the time in the rule is expired, and the plaintiff must declare within four days after such service: (c) and, whether the cause be removed by plaintiff or defendant, if the former do not declare by the time limited in the rule, he may be non-pressed. (d)

When the plaintiff does not put in his replication or rejoinder, or obtain an order for further time, on a judge's summons, the defendant may sign judgment of "non-pros." (e).

So if the plaintiff omit, after having been ruled so to do, to enter the issue within the time appointed; or if he enter it of a term different from that in which the "similiter" is added: (f) but a judgment

(2) Cowp. 117. 1 T. R.

(d) F. N. B. 70. A.

372.

(e) On such a "non-pros"

(a) 1 H. Bl. 281.

in ejectment the defendant gains no costs, 2 Bl. Rep. 763

(b) Lil. P. R. 370.

(f) Tidd, 740.

(c) 11 East, 183.

of "non-pros" cannot be regularly signed after the issue is entered, although it be not entered within the time appointed by the rule. (g)

The defendant, in a writ of error, may sign judgment of "non-pros;" if the record be not certified, (h) diminution alleged, (i) or errors assigned, (k) by the expiration of the rules given respectively for those purposes.

Judgment of "non-pros" is a final judgment, and signed with the clerk of the judgments in K. B. or prothonotaries in C. P., an "incipitur," being first made on a roll, and also on a ten-shilling stamped paper; and, in C. P., the defendant's warrant of attorney must be filed with the clerk of the warrants, who will mark the judgment paper. (l)

Judgment of "non-pros" cannot be signed pending an injunction. (m)

The courts will not, as a matter of course, set aside a judgment of "non-pros" if it be regular; and, in a "qui tam" action, they have refused to do so. (n) But it may be set aside on motion, if irregular, and all the proceedings which have been had upon it, provided the application be made in time; and if an action be brought on the judgment, the whole proceedings may be set aside by

(g) 1 T. R. 16. but see
4 T. R. 195.

(h) Tidd, 1125. no costs
are allowed on "non-pros,"
for not certifying the record.

(i) Id. 1135.

(k) Id. 1136.

(l) Imp. C. P. 560.

(m) Tidd, 351.

(n) 1 Burr. 401.

one rule. (o) But where the plaintiff did not apply till after judgment in an action, brought on the judgment of "non-pros," the Court of C. P. refused to set aside the latter judgment.

A judgment of "non pros," signed because the plaintiff had not adjourned an essoin, has been held as nought, and the plaintiff's subsequent proceedings considered regular. (p)

3. The plaintiff is said to be "nonsuited," when, after the jury are sworn, finding that his case is bad from defect of evidence, or otherwise, he allows himself to be "called," and fails to appear. The advantage attending a nonsuit is this—that the plaintiff, though subjected to the payment of costs, may afterwards bring another action for the same cause, which he cannot do, after a verdict has been given against him.

It is said, that a nonsuit can be had, or that the plaintiff can be called, only at the instance of the defendant: (q) the practice, however, at "nisi prius," is to give the plaintiff his election, whether to be nonsuited, or have a verdict pass against him; but this seems also to be often determined by the judge at "nisi prius," (r) who, if it be clear that the action will not lie, often nonsuits the plaintiff, although the objection appear on the record, and might be taken advantage of by mo-

(o) 4 T. R. 688.

(q) 1 Str. 267.

(p) 2 Str. 1194.

(r) 1 Campb. 256.

tion in arrest of judgment, or on a writ of error. (s)

But it also appears, that the plaintiff is in no case compellable to be nonsuited after he has appeared; (t) and, therefore, if he insist upon the matter being left to the jury, they must give in their verdict as they see occasion.

The king cannot be nonsuited, because by law-fiction he is supposed to be always in court; (u) nor can a plaintiff be nonsuited, as to one of several joint defendants; (x) nor after a plea of tender. (y) But he may be nonsuited after money paid into court; (z) or for not proceeding to trial on issues to some of many pleas, after judgment has been given on demurrer, for the defendant on others. (a) By 13 Geo. 3. c. 11. s. 4. a nonsuit may be entered up against the plaintiff, if he fail on a cause of action arising in Wales, but tried in the nearest English county, to recover debt or damages, to the amount of ten pounds, where the judge has certified on the back of the record of "nisi prius;" and it has been suggested on the judgment roll, that the defendant was resident in Wales at the time of the service of the writ, or other mesne process.

The judgment on a nonsuit is final, and may

(s) Ibid. 3 Taunt, 81.

(t) 2 T. R. 275.

(u) Com. Dig. tit. Pleader

X. 3.

(x) 3 T. R. 662.

(y) 1 Campb. 327. but see the notes there.

(z) Tidd, 858.

(a), 10 East, 366.

In K. B. the rule for judgment (which is a rule to shew cause) is held to be sufficient notice of motion within the act ; (g) but, in the C. P., it is otherwise ; (h) and, though notice has been given in that court of a motion for judgment, as in case of a nonsuit, on which the plaintiff enters into peremptory undertaking to try ; yet notice must be given of the like motion, for not proceeding to trial in pursuance of the undertaking. (i) The roll must be in court, where the motion is made ; (j) and, in C. P., it may be made in the same term in which the plaintiff is ruled to enter the issue. (k) The rule is made absolute of course on an affidavit of service, unless the plaintiff shew cause for not proceeding to trial, as the absence of a material witness, &c. But a slight cause is considered sufficient on the first application, even in a " quantum" action, (m) if the plaintiff will undertake peremptorily to try at the next sittings or assizes ; (n) and the Court of C. P. will not even require that the witnesses are absent, and their return not immediately expected. (o) Where the excuse

(g) *Lofft*, 265. The rule requiring a term's notice of proceeding does not extend to a motion for judgment, as in case of a nonsuit, (5 T. R. 634.)

(h) 1 H. B. 527.

(i) 2 Taunt. 48.

(k) *Barnes*, 313.

(l) 1 Bos. and Pul. 387.

(m) 1 East, 554.

(n) *Doug.* 671. 7 T. R. 178. 3 T. R. 405. *Barnes* 313. 316.

(o) 1 Taunt. 118.

sufficient, the court do not give the costs of the application, which are allowed where it is insufficient. (p)

If the rule be made absolute, the defendant, having drawn it up with the clerk of the rules in K. B., or secondaries in C. P., and procured it to be stamped with a ten-shilling stamp, (q) may sign judgment as in case of a nonsuit, (which is final,) and tax his costs, &c.

The statute, 14 Geo. 2. c. 17., extends to actions brought by executors or administrators, (r) to "qui tam" actions; (s) to the traverse of the return of a "mandamus," (t) and to demandants in a writ of right, who will not be relieved if they conduct themselves unfairly toward the tenant. (u) But it does not extend to actions of replevin, for in them the defendant is an actor, and may carry the record down to trial, without "proviso," as well as the plaintiff; (x) and where a cause has been once carried down to trial, the defendant cannot have judgment as in case of a nonsuit, because it is not carried down again, (y) but must try the cause by "proviso." (z) Where one of two defendants lets judgment go by default, the other

(p) Barnes, 316.

(q) Tidd, 781.

(r) Willes, 316.

(s) 1 East, 554.

(t) Say. Rep. 110.

(u) 1 B. and P. 103.

(x) 3 T. R. 661.

(y) 3 T. R. 1.

(z) See the Practice, 2 Wms.

Saund. 336.

cannot have judgment as in case of a nonsuit. (a)
Nor can it be had where a judge refuses to try an
action on a wager. (b)

(a) Say Rep. 22. 3 T. R. (b) 12 East, 247.
662.

CHAPTER III

Of Judgments by Confession.

1. On a "Cognovit."
2. On a Warrant of Attorney.
3. "Retraxit;" "Cassetur billa."
4. "Nol. Pros."

1.—**BY** confessing the action, where he has no merits, the defendant saves himself the expence of all intermediate proceedings up to final judgment, such as trial, writ of inquiry, &c.; and as the plaintiff is also, by this mode of proceeding, saved much time, trouble, uncertainty, and expence, the defendant, on these considerations, usually stipulates for and obtains terms mutually advantageous; such as a stay of execution, &c.

The confession is usually made after declaration and before plea, and in such case is termed a "Cognovit actionem," being written on the declaration or back of the inquiry, or (unless it contain terms of agreement,) on unstamped paper, (a) thus, "I

(a) 4 East, 188. Such as, by instalments, &c.
that the debt shall be payable

confess the action, (or if in debt, "the debt in this cause,") and that the plaintiff hath sustained damages to the amount of ———, besides his costs and charges, to be taxed by the master," or prothonotaries, in C. P.—If terms are agreed on, they may follow, as that "no judgment shall be entered up, or execution issue, until default shall be made in the payment of the debt, or damages and costs, by a certain day, and no writ of error shall be brought, or bill in equity filed; but that in case default shall be made, the plaintiff shall be at liberty to enter up judgment and take out execution for the debt, or damages and costs; together with the sheriff's poundage, and all other incidental expences."

Where the confession is after plea pleaded, it is termed a "*Cognovit actionem, relicta verificatione*;" and the defendant's attorney ought, in K. B., to come in person before the master to withdraw it, (b) though the practice is otherwise; (c) and in C. P. it is held unnecessary. (d)

Where the court directed a new trial, because a special case was insufficiently stated, and the defendant, without going to trial again, executed a "*cognovit*," he was held liable to the costs of the former trial. (e)

If the confession be for the whole cause of action, and not upon terms, the plaintiff's attorney may

(b) 1 *Ld. Raymd.* 345.

(c) *Imp. K. B.* 492.

(d) *Tidd*, 559.

(e) 6 *T. R.* 144.

immediately (*f*) sign final judgment and take out execution. If the confession be for a part only, judgment can only be signed for the part confessed, and the action must proceed for the residue.

The terms of the "cognovit" should be attended to, for none will be implied which are not clearly expressed, (*g*) but where a judgment on confession is entered up, and execution taken out, contrary to the agreement of the parties at the time of confession, the judgment will be set aside. (*h*)

Where the confession is absolute, and an agreement subsequently made, the court will not interfere to affect the judgment, but will leave the party to his action on the agreement. (*i*) But the defendant having given a "cognovit" is estopped from objecting to any irregularities in the previous proceedings, especially if the omissions can afterwards be supplied before the objection started, as by filing common bail, "nunc pro tunc." (*k*)

An attorney should be present at the signing a "cognovit" on the part of a prisoner in the custody of the marshal. (*l*)

It seems that bankruptcy and certificate do not prevent the entering up a judgment on "cognovit;" for where a man acknowledges the cause of action, the plaintiff may sign judgment at any

(*f*) Tidd, 559.

(*g*) 2 Bl. Rep. 780.

(*h*) 2 Bl. R. 943.

(*i*) 1 Salk. 400.

(*k*) 7 T. R. 206, 237.

(*l*) 3 T. R. 616.

time; (*m*) and a "cognovit," by the principal without notice to the bail, does not discharge the bail. (*n*)

This judgment is signed like other final judgments, by making an "incipitur" on a ten-shilling stamped judgment paper. There is no necessity for a new roll where there has been one already (*o*) carried in.

2.—Where a party wishes to compromise an action, or where there is no action, to ensure a creditor the preference in the payment of his debt, the security usually given is a warrant of attorney, which is so called from its authorizing the attorney or attornies to whom it is directed, to appear for the defendant, receive a declaration in an action to be brought against him, and thereupon to confess the action, or suffer judgment to pass by default; and to sign a release of all errors and defects touching such proceedings.

A defeazance is added, which states, that the warrant of attorney is given for the payment of such a sum on such a day, and stipulates that judgment shall not be entered up until default is made in the payment. It is prudent also, to add, in the defeasance, an agreement that a certain sum, for instance, 50*l.* shall be levied over and above the debt, costs, and sheriff's poundage; out of which sum shall be defrayed all charges arising out of the execution (such as the expence of auctions, &c.)

(*m*) 2 Taunt. 68.

(*o*) Lee's Pract. Dic. 294.

(*n*) 5 T. R. 277.

and the residue be paid over to the debtor. Without this precaution, the creditor will be indemnified for no expences attending execution, except the sheriff's poundage, *(p)* even though such expences (as those arising from an auction) were for the debtor's advantage.

By a late rule of both courts, every attorney who shall prepare any warrant of attorney to confess judgment, subject to any defeazance, must cause such defeazance to be written on the same paper or parchment on which the warrant of attorney is written, or cause a memorandum in writing to be made on such warrant, containing the substance and effect of such defeazance. *(q)* The warrant of attorney is subject to the stamp duty of a pound; *(r)* but the defeazance does not require a separate stamp from that on the warrant of attorney.

Every warrant of attorney should be given voluntarily, and for a good consideration. Therefore if a warrant of attorney be obtained by fraud, *(s)* or for an immoral *(t)* or usurious *(u)* consideration; or for securing an annuity, void by the annuity act, the courts will order it to be delivered up, and set aside the judgment and proceedings which have been had under it. But where securities have been

(p) 2 T. R. 148, 157.

(q) 2 East, 136.

(r) 44 Geo. 3. c. 98. Sched.

A. 48.

(s) Doug. 196.

(t) Tidd, 545.

(u) 1 Bos. and Pul. 270,

acted on, and the money partly paid by the borrower, the court of C. P. will not set aside a judgment and execution on the ground of usury, but on the terms of the defendant's repaying the principal and legal interest.

When a defendant, in custody on mesne process, executes a warrant of attorney to confess a judgment, there must be an attorney present on his part, ^(x) to explain the nature of the instrument to be executed, and advise the defendant confidentially, and subscribe his name as a witness. ^(y) This protection the prisoner cannot waive, and the presence of the plaintiff's attorney is insufficient, although the defendant consent to his acting as his attorney also. ^(z)

A warrant given without these precautions is void, ^(a) and the bailiff or sheriff's officer permitting it is liable to be severely punished. It is not now the practice to read over the warrant in the presence of the prisoner. ^(b)

The rules which give this protection to a prisoner, extend to warrants of attorney executed abroad; ^(c) and in C. P. if a prisoner, on mesne process, give a warrant of attorney, his attorney must be present, though two other persons, not in

^(x) R. E. 15 Car. 2. 2 K. B.
R. H. 14 and 15 Car. 2. Reg.
4. C. P.

^(y) Gowp. 281. R. E. 4
Geo. 2. K. B.

^(z) 1 East, 243.

^(a) R. E. 4 Geo. 2. K. B.

^(b) 2 H. Bl. 383.

^(c) 2 Str. 1247.

custody, join in the warrant. (d) The presence of an attorney's clerk is not sufficient. (e) But it is not necessary that the attorney should be of the same court in which the judgment is to be entered; (f) and in C. P., if the defendant be himself an attorney, no other need be present on his behalf. (g) And where a warrant of attorney was executed in the presence of an attorney's clerk, and it appeared from the defendant's affidavit, that he was induced to execute it because he knew under such circumstances it would be void, the court refused to set aside the proceedings. (h)

An attorney's presence is unnecessary where the warrant of attorney is given to a third person, at whose suit the defendant is not in custody, (i) or where he is in custody upon a criminal process, (k) or upon process of execution; (l) for in the latter case, the debt being liquidated, the defendant is not likely to be prevailed on to confess more than is really due, as he might, under duress, on mesne process, when the debt is unliquidated. However, even in execution, if the party has been prevailed on to acknowledge more than is really due, the court will give relief; (m) and they have also interfered where a prisoner gave a "*cognovit*,"

(d) 2 Taunt. 49.

(e) Barnes, 42.

(f) Id. 44.

(g) Id. 37.

(h) Cowp. 142.

(i) 1 East, 241.

(k) 4 T. R. 433.

(l) 7 T. R. 19.

(m) Cowp. 142.

without the presence of an attorney on his behalf. (n)

In C. P. a defendant was held to be in custody, though the officer left him for some time, while the plaintiff prevailed on him to execute the warrant of attorney: (o) So, a defendant, lodging within the rules of the Fleet, at the house of the officer who arrested him, and who was his security to the warden. (p)

If a warrant of attorney be given by an infant, (q) or by one of several executors, to confess a judgment against all, (r) the courts will order it to be delivered up; and a joint warrant of attorney to confess a judgment by an infant and another, may be vacated against the infant only. (s) A warrant given by or to a feme covert is void, (t) unless she live by herself, and act as a feme sole. (u)

When a warrant of attorney is given to a feme sole, who marries before judgment, judgment may be entered up in the names of husband and wife; but a previous application must be made to the court, founded on an affidavit of the marriage. (x) So, where a warrant has been given by a feme sole who marries before judgment, the

(n) 3 T. R. 616. 1 East, 242.

(o) Cas. Pr. C. P. 128.

(p) 2 Blac. Rep. 1297.

(q) 1 H. Bl. 75.

(r) 1 Sira. 20.

(s) 2 Bl. Rep. 1133.

(t) 2 Wils. 3.

(u) 1 Salk. 400. 3 B. & P.

128, 220.

(x) 3 Burr. 1471.

plaintiff may enter up judgment against husband and wife. (y)

There is indeed one authority, contrary to this latter position. (z) But this seems doubtful on the analogy of all other charges attaching to the feme sole; to which, the husband on his marriage with her, becomes liable, without exception. (a)

Where no dividend has been made, a general judgment may be entered up after bankruptcy, on a warrant of attorney, given by a bankrupt before his bankruptcy. (3 Bos. and Pul. 185.) And where he has paid 15s. in the pound under a second commission, the plaintiff may still enter up a general judgment, and take out general execution; as a Sci. Fa. is not usual on judgments entered up under a warrant of attorney. (id. ibid.) So with respect to a defendant discharged under an insolvent act. But the court will give relief on motion, if, in such cases, the defendant's person or necessary tools be taken. (Ibid.) See post, "Sci. Fa."

A warrant of attorney to enter up judgment is not revocable; (b) but the death of either party is, generally speaking, a countermand of the warrant of attorney; (c) and, therefore, the courts will not allow judgment to be entered up on an old warrant

(y) 1 Show. 91. Say. Rep. 6.
3 Burr. 1470.

(z) 1 Salk. 399.

(a) See 4 East, 522. 1 Salk.
117. 1 Roll. Abr. 351. F. 1.
G. 2 F. N. B. 120. F.

(b) 2 Ld. Raymd. 766, 850.
1 Salk. 87. 2 Esp. Ni. Pri.
Cas. 563.

(c) Co. Lit. 52. b. 1 Vent.
310.

of attorney, if it appear that either party is dead. (d) But if the warrant be to enter up judgment at the suit of A., his executors or administrators, the courts will give his executors or administrators leave to enter up judgment thereon. (e)

And if either party die in vacation, within a year after giving the warrant of attorney, judgment may be entered up of course, as of the preceding term; (f) though it is binding on lands only from the time of signing. (g) Where there are several parties, and one of them dies, judgment may be entered *by* the survivors; (h) and even where the party dies after the year, if the courts can be prevailed on to grant a rule for entering up judgment, they will not afterwards set it aside. (i)

In entering up judgment on a warrant of attorney, the authority given by it, must be strictly pursued; therefore, if the plaintiff enter up judgment in debt, on a "mutuatus," where the warrant was to enter it up in debt on bond, the court will set it aside as irregular. (k)

So, if a warrant of attorney be given to appear, and confess judgment of a particular term, the judgment should be entered of that term, and can-

(d) 8 T. R. 257. Barnes, 2 Bl. Rep. 1301. But not 240. *against* the survivor on a joint

(e) Barnes, 44.

warrant; though the contrary

(f) Willes, 427. Barnes, 267. Cas. Pr. C. P. 11.

is laid down in 1 Wils. 312., and Tidd, 550.; but overruled

(g) 7 T. R. 20.

in 15. East, 592.

(h) Barnes, 40, 48, 53. 2

(i) Barnes, 270.

Maule and S. 76. Wils. 312.

(k) 8 T. R. 153.

not be entered of any other; (l) and where a warrant of attorney was given to confess judgment at the suit of an executor, as of the preceding term, when the testator was living, and the judgment was entered up accordingly, the court held it to be irregular. (m) But if the warrant be given to appear and confess judgment generally, or, (as is most usual,) of a particular or any subsequent term, judgment may be entered of any term after giving the warrant. (n)

Within a year and a day next, after the date of the warrant of attorney, judgment may be entered of course, without applying to the court or a judge. (o) But if it be not entered within that time, the court of K. B. must be moved in term time, (p) or an application made to a judge in vacation, for leave to enter up the judgment, on an affidavit of the due execution of the warrant of attorney, that the debt or part of it is still due, and that the parties are living. (q)

If the warrant of attorney be above ten years old, the application can be made to the court only; and where it is above twenty years old, there must be a rule to shew cause; (r) but where the party, in such case, had admitted the debt within two months before the motion, the court granted it absolute in the first instance.

(l) 7 Mod. 53.

(p) 3 Salk. 322.

(m) 2 Str. 1121.

(q) Tidd, 551.

(n) 7 Mod. 53.

(r) Id. 552.

(o) Tidd, 551.

In C. P. if the warrant be above a year and under ten years old, the application to sign judgment is made by the plaintiff's attorney, on the usual affidavit, at side bar, the first day of term; or in the treasury chamber on other days. In vacation, a judge at chambers will make an order; but the application can be made to the court only, by motion, if the warrant be above ten years old.^(s) If the warrant be above twenty years old, the rule must be to shew cause, and served on the defendant; and where a judgment had not been entered within a year and a day, on a warrant of attorney, given on a "post obit" bond, and the obligee did not apply for leave to enter it 'till after the death of the person on whose death it was payable, the court of C. P. would not grant leave without a rule to shew cause.^(t)

In K. B., if the defendant resides in town, the affidavit should state, that he was alive on a particular day,^(u) within two or three days; and if he reside in the country, on a particular day, within a week or ten days of the application.

In C. P. it must appear, by the affidavit, that the party was alive within a fortnight before making the application;^(x) but a longer time is allowed, according to circumstances, where the defendant resides abroad.^(y) If A. agree to acknowledge an old warrant of attorney given by him, so as to

^(s) Barnes, 47.

^(x) Ibid.

^(t) 2 H. Bl. 94.

^(y) Barnes, 54, 256.

^(u) Tidd, 553.

enable B. to enter up judgment thereon, judgment may be entered up in C. P. under a judge's order, without an affidavit of the subscribing witness; (z) and where the plaintiff being a lunatic, another, who had received the interest upon the bond ever since the plaintiff's lunacy, swore that the principal was unpaid, the court of C. P. held this to be sufficient; (a) but they refused to allow judgment to be entered on an old warrant of attorney, where it appeared by the plaintiff's affidavit, that she was resident in an enemy's country. (b)

An affidavit at Edinburgh must be sworn before a lord of session. (c)

The judgment upon a warrant of attorney, being in "debt," is final; and after filing common bail for the defendant, in the usual way, an "incipitur," containing the plaintiff's warrant of attorney, and the defendant's, is entered on a ten-shilling stamped paper, and also on a roll. Then follows the commencement of the memorandum of the term in which judgment is signed. If the entry be then completed, the declaration succeeds, and finally the judgment. A five-shilling stamped memorandum or minute is necessary, which is left with the clerk of the common bails, at the time of filing common bail. The judgment is signed by the clerk of the judgments in K. B., and the warrant of attorney filed by the clerk of the docquets. A

(z) 2 Bos. and Pal. 85.

(a) Barnes, 42.

(b) 2 New Rep. 97.

(c) Tidd, 553.

copy should be made of the defeazance, and of the warrant of attorney, if it differ in any particular from the usual form of these instruments.

The judgment should be docketed forthwith.

In C. P. the warrants of attorney are entered on a slip of parchment, as in other cases, and filed, with the five-shilling stamped memorandum, at the clerk of the warrants. The judgment paper, marked by the clerk of the warrants, is carried to the prothonotaries' office, where the clerk signs the judgment. The warrant of attorney is filed there, but no appearance is entered with the filacer. (d)

3.—A "retraxit" is the appellation given to a judgment on the plaintiff's voluntarily renouncing his suit in court, and precluding himself for ever, from again bringing an action on the same cause. Of course the occasion for this entry is not frequent. The "retraxit," when applied to the withdrawing a plea, comes under the head of "cognovit actionem relictâ verificatione." (e)

On a plea in *abatement*, if the plaintiff cannot deny the truth of the matter alleged, and it is sufficient in law to quash the bill or writ, he may enter a "*cassetur billa*" vel breve; (f) or, in other words, pray that the bill or writ may be quashed, to the intent that he may sue out or exhibit a better bill or writ against the defendant; and, upon such

(d) Lee's Prac. Dict. 1200. (f) Tidd, 693.

(e) See ante.

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entry, the defendant is not entitled to costs. (g) For the purpose of making this entry, a roll should be obtained of the term of the judgment, and the declaration and plea entered thereon; after which the roll is taken to and docketted with the clerk of the judgments in K. B., and the master having marked the "*cassetur billa*" thereon, it is filed with the clerk of the treasury. (h) In C. P. the roll is docketted and filed with the prothonotaries. (i)

4.—A "*nolle prosequi*" is an acknowledgment by the plaintiff, that he will not further prosecute his suit, as to the whole or a part of the cause of action, or against some or one of several defendants.

A "*nolle prosequi*" is held not to be in the nature of a release or "*retraxit*," and to be no bar to a future action for the same cause, except in those cases, where from the nature of the action, judgment and execution against one, is a satisfaction of all the damages sustained by the plaintiff. (k) Thus, where an action is misconceived against some of the defendants, as if "*trover*" be brought against a defendant, executor, and others not executors, and the jury either finds them all guilty, or the executor not guilty, and the others guilty, the judgment will be erroneous, because an action of "*trover*" does not lie against an executor for a conversion

(g) Tidd, 693.

(h) Imp. K. B. 291.

(i) Imp. C. P. 327, 8.

(k) 3 T. R. 511. 1 Wils. 90.

by his testator; (l) and the defendants are improperly joined, inasmuch as the judgment against them is different; but the plaintiff may cure this defect by entering a "nolle prosequi" against the executor, and taking his judgment against the others. (m) And where any action, founded upon a "tort," such as assault and battery, false imprisonment, "trover," and the like, is brought against several defendants, though they all join in the same plea, and be found jointly guilty; yet the plaintiff may, after verdict, enter a "nolle prosequi" as to some of them, and take his judgment against the rest. (n) And the reason thereof seems to be, because these actions being in their nature joint and several, as the plaintiff might therefore have originally commenced his action against *one only*, so he may, after verdict against several, elect to take his damages against either of them; (o) and upon this ground it is, that where a jury give a wrong verdict in point of law, the plaintiff may cure the defect in the verdict, by entering a "nolle prosequi" before judgment. As, where several persons are jointly charged in an action of assault, battery, and false imprisonment, who either plead jointly or sever in their pleas, or one suffers judgment to go by default, (for it is immaterial which is the case,) if the jury assess *several* damages,

(l) Cowp. 371.

1 Wils. 306.

(m) 1 Wils. 306.

(o) Carth. 20.

(n) 1 Lord Raymd. 597.

the verdict is wrong, and the judgment will be erroneous; (p) but the plaintiff may cure the verdict by entering a "nolle prosequi" against all the defendants but one, and taking judgment against him only. (q)

In these cases it seems that the "nolle prosequi" so entered against some of the defendants, must, from the nature of the actions, be an absolute bar to any future action for the same cause.

Where an action is brought upon any *contract* against several defendants, who join in their pleas, and a verdict is found against them, the plaintiff cannot enter a "nolle prosequi" against any of them, because the contract being joint, the plaintiff is compellable to bring his action against all the parties thereto; and he shall not, by entering a "nolle prosequi," prevent the defendant against whom the recovery has been had, from calling on the other defendants for a rateable contribution (r)

And where the plaintiff declares on a joint contract against two defendants, and one of them pleads infancy; the plaintiff cannot enter a "nolle prosequi" as to him, and proceed against the

(p) 5 Burr. 2792. But the jury may assess several damages if they find some of the defendants guilty of the whole trespass, and the others of a part only, (Cro. Eliz. 860. 11 Rep. 5.) or some of them guilty of a part, or at one time, and the rest guilty of other part, or at another time. (11 Rep. 6. Brownl. 233.) (q) Cro. Car. 239. 6 T. R. 199. (r) 1 Wms. Saund. 207. b.

other defendant in that action, but must commence a new action against the adult defendant only. (s)

But in general, where in actions on contract, the defendants sever in their pleas, and one pleads some plea which goes to his *personal* discharge, (such as bankruptcy, "*ne unques executor*," and the like,) and not to the action of the writ, the plaintiff may enter a "*nolle prosequi*" as to him, and proceed against the others. (t) And though they plead jointly, yet if the plea be in its nature severable, the plaintiff may enter a "*nol. pros.*" as to some, and proceed against the rest; as in an ejectment against several who jointly plead not guilty, the plaintiff may even at the assizes enter a "*nol. pros.*" against one or more of the defendants, and proceed against the rest. (u)

On a plea of coverture, if the plaintiff cannot answer it, he may enter a "*nolle prosequi*" as to the whole cause of action; but the defendant in such case is entitled to costs, under the 8 Eliz. c. 2. s. 2. (x)

A "*nolle prosequi*" may also be entered as to a part of the same *count*; as where the plaintiff declares that the defendant carried away his hay, grass, and corn, he may enter a "*nol. pros.*" as to hay and grass, and proceed for corn. (1 Wms. Saund. 207. c.)

(s) 3 Esp. Cas. Ni. Pri. 76. Saik. 457.

But see 3 Taunt. 307.

(u) 1 Ld. Raymd. 716.

(t) Cro. Car. 239, 243. 1

(x) 3 T. R. 511.

If a defendant pleads the general issue to a part, and a special justification or demurrer to the residue, the plaintiff may enter a "nol. pros." to either of the pleas. (y) So, where there are several issues joined, the plaintiff may enter a "nolle prosequi" to one or more of the issues joined, and proceed to trial on the others. (z)

Where, in "assumpsit" for goods sold and delivered, there is also another count upon "an account stated," if the defendant pleads infancy to the whole, this is a complete bar to the account stated. (a) But the plaintiff may set the declaration right by replying to the first count, and entering a "nol. pros." to the account stated. (b)

If the defendant demur to one of several counts of a declaration, the plaintiff may, on payment of costs of the demurrer, enter a "nolle prosequi" as to the count which is demurred to, and proceed to trial upon the other counts; (c) or if he join in demurrer and obtain judgment, he may enter a "nolle prosequi" as to the issue, and proceed to a writ of inquiry on the demurrer; (d) and this "nolle prosequi" will be in time, if entered up when final judgment is entered. (e)

However, if the defendant demurs to a *declara-*

(y) 2 Roll. Abr. 101. (G.)
pl. 1. 2 Leon. 177. 1 Wms.
Saund. 207. b.

(z) 1 Wms. Saund. 207. b.

(a) 1 T. R. 40.

(b) 1 Wms. Saund. 207. c.

(c) 2 Salk. 456. 1 B. and
P. 157.

(d) 1 Salk. 219. 1 Str. 574.

(e) 1 Str. 532. 7 T. R. 473.

tion, because there are improper counts in it, (*f*) or if he demurs to any of the counts *for imperfection or informalities in them*, the plaintiff is not allowed to cure this defect by entering a "nolle prosequi" as to the improper counts; (*g*) nor can he make such entry against one of several defendants *after* final judgment. (*h*)

(*f*) 1 H. B. 108.

(*h*) 2 Roll. Abr. 100. pl. 5.

(*g*) 4 T. R. 360.

1 Wils. 90. 2 Salk. 455.

CHAPTER IV.

Of Postea ; and of signing, entering, and docquetting Judgments generally.

1. Signing judgment for plaintiff after verdict.
 - 1 A. after writ of inquiry, and on interlocutory judgments.
 - 1 B. In action of debt where there is no verdict ; and on confessions generally.
 - 1 C. On warrants of attorney.
2. For defendant, after verdict.
 - 2 A. As in case of a nonsuit, and on nonsuit.
 - 2 B. On Non. Pros.
3. Of entering judgment.
4. Of docquetting and registering.

THE practice on this head will perhaps be more clearly understood by being collected and exhibited under one general view for plaintiff and defendant.

When the jury have given their verdict, or the plaintiff is nonsuited, the *associate* records the same on the back of the record ; and if the cause

was tried at the assizes, he afterwards (that is, four days after the day in bank, in the next term,) delivers the same to the party in whose favour it is.

But when the cause is tried in town, the associate delivers the record with his *minutes* only of the verdict or nonsuit, indorsed on the back of the panel, immediately to the attorney, and the attorney records the substance thereof on the back of the record. This, from the first word thereof, is called the "Postea," and is the proper instructions for entering up the judgment on the issue roll. It contains the substance of what was done at the assizes or "Nisi Prius," as appears by the following form.

"Afterwards, (a) on the day and at the place within contained, (b) before ———, one of the justices of our lord the king of the Bench, and ———, one of the barons of the Exchequer of our said lord the king, justices of our said lord the king, assigned to take the assizes in the said county of ———, according to the form of the statute in that case made and provided, come, as well the within-named A. B., as the within-named C. D., by their attornies within contained, and the jurors, of the jury whereof mention is within

(a) That is, after the return of the "Venire," and the awarding the "Distringas," or "Habeas Corpora."

(b) That is, on the day of "Nisi Prius," and at the place appointed for holding the assizes.

SECT. 1.] *Of signing Judgment after verdict.* 57

made, being summoned, came to declare the truth of the matter within contained ; and, being chosen, tried, and sworn upon their oaths, say, that the said C. D. doth owe to the said A. B. the £—— within mentioned, in manner and form as the said A. B. within complains against him, and they assess the damages of the said A. B., by occasion of the detaining that debt, over and above his costs and charges by him about his suit in this behalf expended, to £——and for those costs, to ——.”

The above “Postea” is for the plaintiff on “Nil debet ;” but the form of course varies according to circumstances and the nature of the action.

Where the “postea” is very special, the attorney frequently procures the same to be properly drawn and settled, although the associate’s fees thereon are paid at the time of trial. The “postea” must be stamped with a ten-shilling stamp, (c) and marked by the clerk of the postea at any time before the costs are taxed. (d)

1. The “postea” being engrossed on the back of the record, the party entitled to it, on the day in bank, but not before, (when the “Distringas” or “Habeas Corpora” is returnable on that day,) or afterwards, in the King’s Bench, gives a rule on the “postea” for judgment. (e) This rule is

(c) 48 Geo. 3. c. 149. Sched. part II. s. 3.

(d) 1 Crompt. 277.

(e) Except where plaintiff is nonsuited ; there no rule is ne-

cessary. Tidd, 874. Where a verdict is taken, subject to the award of an arbitrator, a rule for judgment is necessary. 4 East, 310.

out in four days exclusive, after it is entered, (f) (Sunday or "dies non" not reckoned.) But till this rule is expired, final judgment cannot be signed. These four days are allowed for the other party to move in arrest of judgment, or for a new trial; or he may bring a writ of error. And though no such rule is given in the Common Pleas, yet the party is obliged there to wait till after the "quarto die post" of the return of the "Habeas corpora juratorum," for the same purposes; (g) and if nothing is done to avoid the judgment, then the party carries the "postea" to the prothonotary's, to tax the costs, and sign final judgment. In C. P. the "postea" is left with the prothonotary's clerk.

When the cause is tried at the sittings *within* term, the return of the "distringas" may be the first return day after the sittings in the same term, and the rule for judgment may be given on that day; and where the proceeding is by bill, and the cause shall have been tried the day before the last day of term, this rule may be given on that day; and if the party intend to move in arrest of judgment, the motion must be made on such last day of that term. (h)

In C. P. too, the rule that final judgment cannot be signed till four days after the return of the

(f) 11 East, 272. 13 East, Reg. 410.

21.

(h) 2 Lee's Prac. Dic. 751.

(g) Barnes, 443, 445. Pr.

“Habeas corpora juratorum,” does not extend to cases where the term closes before the four days are expired. (2 B. and P. 393.)

1. A.—Interlocutory judgments, as has before been stated, (i) are those incomplete judgments, whereby the right of the plaintiff is established, but the quantum of damages sustained by him remains to be ascertained by a jury. Therefore, in actions of assumpsit, case, covenant, trespass, or the like, which sound only in damages; where judgment goes by default, on demurrer, or for not returning demurrer book in time, after the rule given in such case; the proceedings are as follow:—

Warrants of attorney for the plaintiff or defendant are entered on a roll, (to be obtained of any law stationer,) and a memorandum of the term in which the declaration was filed, is made thereon. Then, the memorandum only, is entered on a four-penny stamped paper, which is taken to the clerk of the judgments in the King’s Bench office, who signs the same, four-pence per sheet being paid; and eight-pence for the warrants of attorney.

In the Common Pleas, the “incipitur” is made on a four-penny stamped paper instead of a roll; the warrants of attorney entered on unstamped parchment, and filed at the warrant of attorney office, where the judgment paper is marked; the same is then carried, with the draught of the decla-

(i) *Ante.*

ration to the prothonotary's office, where judgment is signed.

(Where demurrer has been joined, the interlocutory judgment will have been sufficiently signed by the clerk of the papers, having marked the roll before argument. *(k)*)

Interlocutory judgment being thus signed, a writ of inquiry is sued out; which is a judicial writ, directed to the sheriff of the county where the action is laid; in the execution of which the sheriff sits as judge, and tries by a jury subject to nearly the same law and conditions as the jury at "Nisi prius," what damages the plaintiff hath really sustained. This jury must assess some damages, and the sheriff on the fourth day after the return of the writ, delivers to the plaintiff's attorney, his return, with the inquisition annexed.

Notice must be given of the execution of this writ; and eight days exclusive *(l)* is sufficient in all cases, except causes in London and Middlesex, where the defendant lives above forty measured miles from London; there fourteen days' notice must be given; and where no proceedings have been had within four terms, a term's notice; unless the proceedings have been stayed by injunction. The term's notice may be given after the essoin day, but before the first day in full term. *(m)*

On the return day of the writ of inquiry, the

(k) 1 Lee's Pract. Dict. 390. day. Ante, Ch. 1.

(l) Sunday is accounted a *(m)* Impey's Prac. 482.

rule for judgment (which expires in four days exclusive, Sunday, or a "dies non," not reckoned,) is given: in the mean time the writ, with the return or inquisition annexed thereto, is obtained from the sheriff's office, and stamped with a ten-shilling stamp; the costs are then taxed, and the amount and damages marked on the inquisition by the master. In the Common Pleas no rule is given (n) on the return day of the inquisition; but four days from that time being expired, the inquisition is entered by the prothonotary's clerk, and costs are taxed by the prothonotary, with whom the inquisition is left.

Where the action is on a bill of exchange or promissory note, the court will, on motion, refer it to the master, to see what is due for principal, interest, and costs, and order final judgment to be signed for that sum, without the execution of a writ of inquiry.

The rule, which is a rule "nisi," must be grounded on an affidavit, that the declaration is on a promissory note, or bill of exchange, (bearing date, &c., whereby, &c.,) and that interlocutory judgment is signed for want of a plea. (o)

The like rule may be had in an action on an award; (p) in an action of covenant for mort-

(n) *Lee's Prac. Dict.* 755. motion. 1 Salk. 399.

But in real or mixed actions (o) *Impey*, 481.

there cannot be final judgment (p) *Ibid.*

without a peremptory rule on

gage money, *(q)* or for non-payment of rent; *(r)* but not on a foreign judgment, or on a bill of exchange for Irish money; *(s)* or in an action on a judgment, where judgment is obtained by default. *(t)*

1. B.—In the action of “debt,” for a sum certain, there is, properly speaking, no interlocutory judgment. When, therefore, in this action, there has been a joinder in demurrer and judgment given for the plaintiff, a rule stamped on a ten-shilling stamp is taken out for judgment on the demurrer, the master taxes the costs, and marks the roll and rule with the amount.

As the ten-shilling stamp on the rule is no formal matter of record, an “incipitur,” made on ten-shilling stamped paper, with the rule annexed, will do as well. *(u)* The clerk of the judgments will sign the judgment, the master tax the costs and mark them on the judgment paper.

In the Common Pleas, the rule for judgment on the demurrer is drawn up by the secondary, and judgment signed by the prothonotary.

Where, in this action, the demurrer book is not returned in time, *(x)* or judgment is otherwise suffered by default, confession or retraxit, no rule for judgment is necessary, *(y)* (the rule to return

(q) 8 T. R. 410.

(x) Lee's Prac. Dic. 389.

(r) 8 T. R. 326.

(y) Tidd, 565. Unless where

(s) 4 T. R. 493. 5 T. R. 87.

the confession is on terms; as

(t) 8 T. R. 395.

for judgment, not to be entered

(u) Lee's Prac. Dic. 390.

up, except after a certain time,

the demurrer book, or the rule to plead, being as sufficient a warning in this case, as the rule for judgment in others, while confession seems to supersede the necessity of a warning,) and the plaintiff may proceed immediately to tax his costs, and sign final judgment on a ten-shilling stamped paper. The same practice on *cognovits*, or full confessions in other actions.

Where in an action of "debt," on bond conditioned, for the performance of covenants or agreements, judgment is given for the plaintiff, by confession, default, or on demurrer, final judgment may be signed as above, for the whole penalty, but it stands only as a security for the damages actually sustained. (z) These, if not assigned in the declaration or replication, or suggested on the roll, as they may be, after issue joined and before verdict, (a) must be suggested on the roll (b) after the judgment; and then, in either case, ascertained by a jury under writ of inquiry. But, as under this mode of proceeding, there seems to be some difficulty how to enter up the judgment so as to have the costs of the inquisition, it seems advisable, in these cases, to sign an interlocutory judgment ("that the plaintiff *ought* to recover") before the

or on certain contingencies; there, it should seem, on principle, that a rule should be given to afford the opposite party an opportunity of shewing that the terms have not

been attended to.

(z) 2 Burr. 820.

(a) 8 T. R. 255. 2 Wms. Saund. 187.

(b) 8 and 9 W. 3. c. 11. s. 8.

inquisition; and on the return of that writ, final judgment as usual. "Therefore it is considered, that the plaintiff *do* recover the debt, and *£* as well for his damage on occasion of the detention of the debt, as for his costs and charges of inquests;" in which are included the costs of the inquisition. (c)

1. C.—The proceeding in signing judgment on a warrant of attorney, is the same as that above described, for signing judgment by confession, in "debt," where the judgment is final; the warrant of attorney must be filed with the clerk of the judgments; and a five-shilling stamped memorandum or minute, is left with the clerk of the common bails, at the time of filing common bail.

In the Common Pleas, the warrants of attorney are entered on a slip of parchment, and filed with the clerk of the warrants.

If the warrant of attorney be above a year old, an application must be made to the court in term time, or to a judge in vacation, for leave to enter up the judgment.

The application is founded on an affidavit, that the debt is yet due; that the warrant of attorney was duly executed as a security for the same; that the defendant was alive, if in town, two or three days before the affidavit or application made; if in the country, a week.

If the warrant be above twenty years old, the

(c) 1 Wms. Saund. Rep. 58. Note 4.

SECT. 2. A.] Of signing judgment for defendant. 66

rule applied for, is a rule "nisi," unless the warrant has been recently acknowledged. In vacation the affidavit is taken to a judge's chambers, who, thereupon, makes an order, which like the rule above, is annexed to the judgment paper; but such order will not be given unless the warrant of attorney be under ten years old.

2.—The method of signing judgment for the defendant, after a verdict, is the same as that of signing judgment for a plaintiff after verdict; that is, as to the rule to be given; the ten-shilling stamped paper, and the offices to be attended:

2. A.—Where the plaintiff, after issue joined of record, neglects to bring such issue on to be tried according to the courts and practice of the courts, the defendant, after notice, may have a rule to shew cause why judgment should not be entered as in case of a nonsuit. (d) This rule is founded on an affidavit of the state of the proceedings, and of the plaintiff's default in not proceeding to trial.

In K. B. the rule is considered sufficient notice of the motion; (e) but not so in the Common Pleas, (f) where notice must in all cases be given.

To move for judgment, as in case of a nonsuit, the roll must be in court at the time the motion is made; (g) and the rule is made absolute of course, on an affidavit of service, unless the plaintiff shew cause.

(d) 14 Geo. 2. c. 17.

48.

(e) Lofft, 265.

(g) Barnes, 313.

(f) 1 H. Bl. 287. 2 Trutt.

The rule being made absolute, is drawn up with the clerk of the rules in K. B., or secondaries in C. P., stamped with a ten-shilling stamp, judgment signed, and costs taxed.

Where the plaintiff is non-suited, no rule for judgment is necessary, (h) and it may be signed immediately after the day in bank.

2. B.—Nor is any rule for judgment necessary in cases of “Non pros.,” the rule for declaring, replying, or entering issue, is a sufficient warning; and if the plaintiff do not obey that rule, or obtain an order for further time, the defendant, at the expiration of the rule, may proceed to the signing of judgment, which, as it is final, must be on ten-shilling stamped paper.

3.—By 29 C. 2. c. 3., officers signing judgments shall enter the day of signing the same; and judgments shall bind lands only from the time of actually signing the same.

The judgment, after it is finally signed, is entered on the issue roll, which thenceforth is called the judgment roll; and in the King’s Bench, if the roll has already been carried in, which seldom happens but where the plaintiff has been ruled to enter the issue, the “postea” is taken, with the master’s “allocatur,” to the treasury at Westminster, and the clerk of the treasury continues the proceedings, and enters the judgment. But if an “incipitur” only is made on the issue roll, the whole

(h) Tidd, 874.

proceedings are to be entered; beginning with the warrants of attorney. These entries, which were formerly made by the clerks of the chief clerk; are now made by the attornies.

In the Common Pleas, the "*postea*" is left with the clerk of the judgments, who enters it on the roll. The judgment, if lost, may be supplied by a new entry; (i) and a person interested in a judgment may compel the party to enter up the same, the judgment-book not being evidence of a judgment entered therein. (k) As to entering judgment "*nunc pro tunc*," see chapter 7. post.

In the K. B. the rolls of Trinity, Michaelmas, and Hilary terms, must be brought in before the essoin day of every subsequent term; and the rolls of Easter term before the first day of Trinity term. But the "*custos brevium*" usually attends the day but one before every term to receive and file rolls; and a roll may be had of a preceding term, as a matter of course, by applying to the clerk of the treasury, and paying a "*post terminum*," which roll may be docketted and filed on paying some small additional fees.

In C. P., by indulgence, the rolls of Michaelmas term are taken in and docketted in Hilary; those of Hilary in Easter; of Easter in Trinity; and of Trinity in Michaelmas term; otherwise they must be filed with the clerk of the essoins. When they are brought in, the paper books, on which judgment

(i) 2 Burr. 722.

(k) 2 N. R. 474.

is signed, must be produced, and after they have been compared with the rolls, the latter are delivered to the clerk of the warrants, by whom they are delivered over to the clerk of the essoins.

4.—By R. G. K. B. E. 17 Jac. 1. all judgments for sums amounting to 20*l.* are to be regularly docketed, by the attorney making a note on parchment or paper, containing the names of the parties, the debt and damages recovered; the term and roll, and where such judgment shall be entered, and delivering it to the proper officer, who is to register the same in a book kept for the purpose. And by rule, E. T. 1657, the defendants' names in all judgments to be entered, shall be entered in a remembrance, or docketed alphabetically, for the better finding out such judgments.

The 4 and 5 W. and M. c. 20., provides in what manner and at what time judgments shall be docketed by the respective officers, in books for that purpose, (1) that the same may be searched for by any one paying for the same; and upon neglect of the officers in such case, gives the penalty of 100*l.* half to the party grieved, and half to the party suing for the same. By s. 3., no judgment not docketed shall affect lands or tenements in the purchasers or mortgagees, or have preference against heirs, executors, or administrators, in their administration of estate.

(1) This docketing by the officers in books, does not supersede the necessity of the attorney's docket on parchment or paper, under R. G. K. B. E. 17 Jac. 1.

Where the docquetting has been neglected, it seems the chief clerk would be liable to any party affected by this neglect; and the attorney who had undertaken the docquetting, would be liable to the chief clerk. (*m*)

The judgment should be docquetted at the time of bringing in the roll, or entering it thereon, if already brought in; and it is said, that a judgment cannot be docquetted after the time mentioned in the act, and that the practice of the clerks docquetting them after that time is only an abuse, and ineffectual to the party. (*n*)

In Middlesex and Yorkshire judgments must be *registered* at the register office, according to the mode prescribed 5 Ann. c. 18. s. 4. (*o*) and subsequent statutes, in order to give effect to the judgment, as against purchasers and mortgagees.

A memorial of the judgment being drawn up, pursuant to the statute, with a certificate attached, ("that judgment was signed in the above cause, on ———,") is ingrossed on ten-shilling stamped parchment, and carried to the master of the King's Bench office, who, on seeing the *postea*, inquisition, or judgment paper, subscribes the certificate; an affidavit (sworn before a master in Chancery, or a judge of the court where the judgment was ob-

(*m*) 2 Burr. 722. 1 Str. 639. (*o*) 6 Ann. c. 35. s. 19. 7
Sugd. V. and P. 311. Ann. c. 20. s. 18. 5 Geo. 2.

(*n*) Sugd. V. and P. 448. c. 6. s. 1 and 18.

2 Eq. Cas. Abr. 592. pl. 3.

tained,) is annexed, that the attorney's clerk saw the master subscribe the certificate. Stamp of affidavit, half a crown.. The memorial is filed with the register. (p)

(p) Impey, 444.

CHAPTER V.

Of arresting Judgment.

WITHIN the time limited by the rule for judgment in K. B., (a) or before or on the appearance day of the return of the "habeas corpora juratorum" in C. P., an arrest of judgment may be moved for by the unsuccessful party, if ground exist for such a proceeding.

The only ground of arresting judgment at this day, is some matter intrinsic appearing upon the face of the record, (b) which would render it erroneous and reversible; and after judgment on demurrer, there can be no motion in arrest of judgment, for any exception which might have been taken in arguing the demurrer; for the matter of law having been already settled, by the solemn de-

(a) See preceding chapter. be sued within this time, or afterwards.

Within this time too, new trials (where there is sufficient cause for them) must be moved for. But writs of error may

(b) 1 Ld. Raym. 232. 1 Salk. 77. 4 Burr. 2287.

termination of the court, they will not suffer any one to tell them that the judgment, which they gave on mature deliberation, is wrong.

As defects, apparent on the face of the record, are the ground of motions in arrest of judgment, it becomes necessary to ascertain what defects are cured by the statutes of amendments; what are cured by the statutes of jeofails, before and after verdict; and what are cured after verdict at common law.

Premising then, that at common law, the court on motion, or a judge at chambers, will, while the pleadings are in paper, and before they are entered of record, amend the declaration, plea, replication, &c., in form or in substance, on proper and equitable terms, (c) the courts, when the proceedings are entered on record, will amend no further than is allowable by the statutes of amendments. (d) By the first of these statutes (14 Ed. 3. 1. c. 6.) it is enacted, that no process shall be annulled or discontinued by misprision of the clerk in writing one syllable or letter too much or too little; but as soon as the mistake is perceived, by challenge of the party, or in other manner, it shall be amended in due form, without giving advantage to the party who challengeth the same, because of such misprision. The judges extended this provision for a syllable or letter, to a *word*. (e) And by 9 Hen.

(c) 1 Salk. 47. 3 Salk. 31.
1 Wils. 7. 223. 76.

(d) 1 Salk. 47.

(e) 8 Rep. 157.

5. l. c. 4., it is declared, that they shall have the same power as well after as before judgment, so long as the record and process are before them. This statute, made perpetual by 4 Hen. 6. c. 3., does not extend to process of outlawry. - By the 8th H. 6. c. 12. the justices are further empowered to examine and amend what they shall think in their discretion to be the misprision of their clerks, in any record, process, word, plea, warrant of attorney, writ, panel, or return; and by 8 Hen. 6. c. 15., they may amend the misprisions of their clerks and other officers, as sheriffs, coroners, &c., in any record, process, or return before them, by error or otherwise, in writing a letter or syllable too much or too little.

These are, properly speaking, the only statutes of amendments, (the rest beginning with 32 H. 8. c. 30., are statutes of jeofails,) and they do not extend to criminal cases (f) or penal actions; (g) nor, as it seems, to process in inferior courts. (g)

In order to amend on these statutes, it is a general rule that there must be something to amend by. The original writ or bill, by the instructions given to the officer; (h) the declaration by the bill; (i) the pleadings subsequent to the declaration, by the paper book, (k) or draft under counsel's hand; (l)

(f) 1 Salk. 51.

(i) 1 Str. 583.

(g) Wilkes, 122.

(k) 8 Rep. 161.

(h) 8 Rep. 161. Barnes, 26.

(l) Cro. Eliz. 268. 2 Str.

the "nisi prius" roll by the plea roll; (*m*) the verdict, whether general or special, by the plea roll, (*n*) memory or notes of the judge, (*o*) or notes of the associate or clerk of assize; (*p*) and if special, by the notes of counsel, (*q*) or even by affidavit of what was proved on the trial; (*r*) the judgment by the verdict, (*s*) and the writ of execution by the judgment, (*t*) or by the award of it on the roll. (*u*)

By the statutes of jeofails, the following defects are aided or cured after a verdict:

The want of an original writ, (*x*) or bill upon the file, (*y*) variance in form only, between the original writ or bill, and the declaration, plaint or demand; (*z*) want of form or pledges returned upon the original writ, or the omission of the sheriff's name in the return thereon, or want of pledges in any bill or declaration; (*a*) want of a warrant of attorney for either party, (*b*) or appearance by attorney of an infant *plaintiff*. (*c*) Mispleading, lack of colour, insufficient pleading or jeofail, or

(*m*) 8 Rep. 161. Barnes, 14.

(*n*) 1 Ld. Raymd. 133.

(*o*) Barnes, 61. 2 Str. 1197.
8 East, 357. But see 1 H. B.
78. 6 T. R. 694.

(*p*) 1 Salk. 47. 1 Ld. Raymd.
335. But see 2 T. R. 281.

(*q*) 1 Salk. 47.

(*r*) 3 Mod. 49.

(*s*) 3 T. R. 349.

(*t*) 3 T. R. 657.

(*u*) 2 B. and P. 336.

(*x*) 18 Eliz. c. 14.

(*y*) Hob. 130, 134, 264,
281, 304.

(*z*) 21 Jac. 1. c. 13.

(*a*) 16 and 17 Car. 2. c. 8.

(*b*) 18 Eliz. c. 14. 32 H. 8.

c. 30.

(*c*) 21 Jac. 1. c. 13. Barnes,
413. 12 Str. 114.

other default or negligence of the parties, their counsellors or attornies; (d) want of form in any count, declaration, plaint, bill, suit or demand; (e) lack of averment of any life, so as the person be proved to be alive; (f) want of any "profert," or the omission of "vi et armis" or "contra pacem," mistaking the Christian or surname of either party; (g) sums, day, month, or year, in any bill, declaration or pleading, being right in any writ, plaint, roll or record preceding, or in the same roll wherein the same is committed, to which the plaintiff might have demurred and shewed the same for cause; want of the averment of "hoc paratus est verificare," or "verificare per recordum," or "prout patet per recordum," or the want of a right venue, so as the cause were tried by a jury of the county where the action is laid; or any other matters of like nature, not being against the right of the matter of the suit, nor whereby the issue or trial are altered. (h) Misjoining the issue, (i) awarding the "venire facias," "habeas corpora," or "distringas," to a wrong officer upon insufficient suggestion; misawarding the "visne" out of more or fewer places than it ought to

(d) 32 H. 8. c. 30.

(e) 18 Eliz. c. 14.

(f) 21 Jac. 1. c. 13.

(g) 3 Wils. 40.

(h) 16 and 17 Car. 2. c. 8.

Which statute seems to extend also to causes tried in a wrong

county. 7 T. R. 583. 2 East, 580.

(i) 32 H. 8. c. 30. Which extends to miscontinuance, discontinuance, or misconveying of process.

be, (so as some one place be right named;) misnemer of any of the jury, (so as upon examination it be proved to be the same man that was meant to be returned;) want of return of the said writs, (so as a panel of the names of the jurors be annexed to the writs,) or omission of the sheriff's or other officer's name, (so as it be proved that the writ was returned by the sheriff or other officer.) (k)

If a "venire" be of the same action and between the same parties, all other faults in it are amendable. (l) But if in ejectment the "venire" be of a plea of trespass, omitting "an ejectment of farm," it is ill, because not in the same action; (m) but if the "distringas" had been right, the court would have adjudged the "venire" to be null; and the want of it is aided. (n) The 21 Jac. 1. c. 13., does not extend to the Christian name of the jurymen, and a mistake in that is incurable. (o) But the court of C. P. refused to set aside a verdict because one of the jurors was named Henry in the "venire," "habeas corpus," and "postea," his name being Harry. (p) And the court of K. B. would not set aside the verdict where one of the jurymen had answered to his father's name, and served as his father. (q) However, there must be a panel

(k) 21 Jac. 1. c. 13.

(l) Gilb. C. P. 174.

(m) Cro. Jac. 538.

(n) Id. 175. But see Cro. Car. 275, 278., where a similar mistake in the jurata was

amended, the "venire" and "distringas" being right.

(o) 5 Rep. 42.

(p) Barnes, 454.

(q) 12 Harty 259.

See also 12 Harty 259.

returned; and if the sheriff return 23 on the "venire," and 24 on the "habeas corpus" or "distringas," and the 24th omitted on the "venire" appear and be sworn, the verdict will be void. (r)

The statute, 22 H. 8. c. 30, is confined to actions at common law; and in all the subsequent statutes of jeofails, there is a proviso, that they shall not extend to criminal proceedings. (s) A discontinuance is cured by the appearance of the party in penal as well as other actions; (t) and the omission of a similiter is holden to be amendable. (u)

By the 4 and 5 Ann. c. 16. s. 2, the statutes of jeofails are extended to judgments by default; so that all defects, which were cured on a verdict by the statutes of jeofails at that day, are helped on judgments by default; but not defects which are cured after a verdict by common law; nor, as it should seem, defects helped after a verdict, by 5 Geo. 1. c. 18, where it is enacted that judgment after verdict shall not be stayed or reversed, for any defect or fault either in form or substance, in any bill, writ original or judicial, or for any variance in such writs, from the declaration or other proceedings.

(r) Cro. Car. 278. See also actions.
Bull. Ni. Pri. 324.

(s) 6 T. R. 225.

(t) The 4th Geo. 2. c. 28. (u) Comp. 407. 1 St. 641.
seems to extend them to penal 2 Wms. Saund. 319. (C)

It becomes necessary, therefore, in order to ascertain the nature of the defects, which are aided after a judgment by default, since the statute of Anne, to distinguish accurately between such imperfections as are cured by a verdict at common law; and those which are remedied after verdict, by the statute of jeofails only.

With respect to the former then, where there is any defect, imperfection or omission in any pleading, whether in substance or form, which would have been a fatal objection upon demurrer; yet if the issue joined be such as necessarily required on the trial proof of the facts so defectively or imperfectly stated or omitted, and without which, it is not to be presumed, that either the judge would direct the jury to give, or the jury would have given the verdict. Such defect, imperfection, or omission, is cured by the verdict at common law; or, in the phrase often used, is not any jeofail after verdict. (x)

Thus, where a grant of a reversion, rent charge, advowson, or any other hereditament which dies in grant, and can only be conveyed by deed, is pleaded, but is not alleged to have been by deed, or if a feoffment be pleaded without livery, so that the grantee or feoffee does not shew in himself a perfect title; yet, if the grant or feoffment be put in issue, and found by the jury, the verdict cures

(x) Cro. Car. 497. 1 Salk. 7 T. R. 518. 308. Dougl. 648. 3 T. R. 25.

such imperfection at common law. (y) But such defect is a fatal objection after judgment by default; because, if aided in such case, it might frequently happen that the court would give judgment for the plaintiff where he is not entitled to recover; but where a verdict has established the grant or feoffment, that is sure ground on which the court may proceed.

So, where a promise depends upon the performance of something to be first done by him to whom the promise was made; and in an action upon such promise, the declaration does not aver performance by the plaintiff, or that he was ready to perform, and there is a verdict for the plaintiff, such omission is cured by the verdict at common law, but is a fatal objection after judgment by default; for the objection there holds the same as if it had been on demurrer. (z)

So, in an action for a malicious prosecution, it is necessary to allege in the declaration, that the prosecution is at an end. (a) The want of this averment is cured after verdict; (b) for it is a necessary inference, that it was proved on the trial, that the original prosecution was at an end: But it is fatal upon demurrer, or after a judgment by default; for how can the court in such a case say, that the original prosecution is not still going on?

Where there was any defect, omission, or im-

(y) 1 T. R. 145.

(a) Hob. 267. 2 T. R. 225.

(z) 2 Burr. 899.

(b) 1 Wms. Saund. 223. &c.

perfection, though in form only, in collateral parts of the pleading, that were not in issue between the parties, so that there was no ground to presume that the defect or omission was supplied by proof, these defects were not cured by a verdict at common law; but they are, as we have seen, aided by the statutes of jeofails, both after verdict, and judgment by default; for it was an extremely hard case that a judgment given on merits, should be stayed or reversed for defects in form, on collateral matters.

Though a verdict will aid a title defectively set out, yet neither verdict nor the statutes of jeofails will aid a defective title; (c) or a plaintiff who totally omits to state any title or cause of action; for the plaintiff need not prove, and therefore will not be presumed to have proved more than what is expressly stated in the declaration, or is necessarily to be implied from the facts which are stated. (d) Thus, where in an action against the indorser of a bill of exchange, the plaintiff did not allege a demand on and refusal by the acceptor when the bill became due, or that the defendant had notice of the acceptor's refusal; this omission was held to be not cured by the verdict. (e)

The defendant cannot move in arrest of judgment any thing which might have been pleaded by

(c) 1 Salk. 365. 1 Burr. 301. 521. Doug. 658.
4 T. R. 472.

(e) Doug. 679.

(d) 1 T. R. 142. 7 T. R.

statement; (f) nor, after verdict, will surplusage be considered as vitiating the proceedings. (g) But if the gist of the defendant's bar be bad, it cannot be cured by a verdict found for the defendant. Thus, where a plea confesses the action, and does not sufficiently avoid it, judgment shall be given on the confession, without regard to a verdict for the defendant. Judgment, "non obstante verdicto," (h)

A verdict cannot help an immaterial issue, though an informal one is aided by 32 H. 8. c. 30. An immaterial issue is where that which is materially alleged by the pleadings is not traversed, but an issue taken on such a point as will not determine the merits of the cause. An informal issue is where such allegation is not traversed in a proper manner; where the issue is immaterial the courts will award a repleader. A judgment, therefore, "non obstante verdicto," is always upon the merits, and never granted but in a very clear case. (i) A repleader is upon the form and manner of pleading.

A "venire facias de novo," which must be grounded on matter appearing on the face of the record, (k) is grantable where the jury are im-

(f) 2 Bl. Rep. 1120.

(i) 2 Smith, R. 9.

(g) Co. Lit. 303. Cro. Jac.

(k) 1 Wils. 56. *New trials*

are granted for matters which

do not appear on the face of

(A) 2 New Rep. 225.

properly chosen, or there is any irregularity in returning them; (*l*) where they have conducted themselves improperly; (*m*) where they give *general* damages upon a declaration containing defective counts; (*n*) where the verdict, whether general or special, (*o*) is imperfect by uncertainty or ambiguity; (*p*) or by finding less than the whole matter put in issue, or by not assessing damages. (*q*) A "*venire de novo*" may be granted by a court of error, (*r*) after a demurrer to evidence, or bill of exceptions; (*s*) and where it is awarded, the party succeeding is only entitled to the costs of the second trial. (*u*) By 7 and 8 W. 3. c. 32. s. 1. if the plaintiff, after issuing jury process, do not proceed to trial at the first assizes, a "*venire facias de novo*" may be awarded; but it is unnecessary if the jury be discharged at the assizes to have

the record, as a verdict contrary to evidence, &c.; they have been resorted to in modern times, instead of an attaint against the jury. (*Ibid.*)

(*l*) 2 T. R. 126.

(*m*) *Ibid.*

(*n*) 6 T. R. 691. 2 Wms. Saund. 171. b. If evidence was given at the trial *only* on such counts as were good, the general verdict may be altered from the notes of the judge, and

entered only on those counts.

1 B. and P. 329. Willes, 443.

Doug. 722. 1 T. R. 542.

(*o*) 2 Lord Raymd. 1 584

2 Str. 887.

(*p*) 1 East, 111.

(*q*) 2 T. R. 126. 2 Wms.

Saund. 210. (g. 3.)

(*r*) 5 T. R. 367. 2 N. R.

328. But see 1 T. R. 151.

(*s*) 5 T. R. 367.

(*t*) 3 T. R. 36. 2 T. R. 125.

a view; (x) and the plaintiff is never entitled to it where he states a defective case upon a special verdict. (y) Where the consideration of slander appeared to have operated in increasing the damages in an action of trespass, it was holden no ground for arresting the judgment; the slander being merely an aggravation of the trespass. (z) A judgment on demurrer was arrested, because it was not stated in the judgment, that the plea had been found insufficient. (a)

(x) 1 East, 111. 6 T. R.

131.

(z) Com. Rep. 248.

(y) 3 Smith, B. 39.

(z) 2 Maule and Sel, 79.

(a) Salk. 400.

CHAPTER VI.

Of certain special Judgments.

1. Of Judgments in Replevin.
2. Against executors and administrators.
3. Against the heir in an action of debt on the bond of his ancestor.
4. Against several defendants.

BY 17 Car. 2. c. 7. s. 3. it is enacted, that if judgment be given *upon demurrer* for the avowant, or him that makes cognisance *for any rent*, the court shall, at the prayer of the defendant, award a writ to enquire of the value of the distress; and, upon the return thereof, judgment shall be given for the avowant or him that makes cognisance as aforesaid, for the arrears alleged to be behind in such avowry or recognisance, if the goods or cattle distrained, shall amount to that value; and in case they shall not amount to that value, then for so much as the said goods or cattle

so distrained shall amount to, together with his full costs of suit ; and shall have execution thereupon, by " Fieri Facias," " Elegit," or otherwise, as the law shall require.

Sect. 2. provides, that whensoever any plaintiff in replevin shall be *nonsuit before issue joined*, the defendant making a suggestion in nature of an avowry or cognisance for such rent, to ascertain to the court the cause of his distress ; the court, upon his prayer, shall award a writ to the sheriff of the county where the distress was taken, to inquire, by the oaths of twelve, &c., touching the sum in arrear at the time of such distress taken, and the value of the goods or cattle distrained : and, thereupon, fifteen days' notice shall be given to the plaintiff or his attorney in court, of the sitting of such inquiry ; and, thereupon, the sheriff shall inquire of the truth of the matters contained in such writ, by the oaths of twelve, &c. ; and upon the return of such inquisition, the defendant shall have judgment to recover, &c. (as in sec. 3.) And in case the plaintiff shall be nonsuited *after* cognisance or avowry made and issue joined, or if a verdict be given against the plaintiff, then *the jurors, who were impanelled or returned to inquire of such issue*, shall, at the prayer of the defendant, inquire concerning the sum of the arrears, and the value of the goods or cattle distrained ; and thereupon the avowant, or he that makes cognisance, shall have judgment, (as above.)

At common law, in all cases of distress, when judgment was given in replevin for the avowant or person making cognisance, on *demurrer*, the form was to award a return ^(a) of the cattle or goods distrained, to the defendant; and if the distress had been for rent, customs, services, or damage feasant, an inquiry of damages and costs was also awarded, pursuant to the statutes 7 H. 8. c. 4. s. 3. and 21 H. 8. c. 19. s. 3. The defendant accordingly sued out upon the judgment a "*retorno habendo*," and an inquiry of damages in the same, ^(b) or sometimes in separate ^(c) writs; and upon the return thereof by the sheriff, final judgment was entered up for the defendant, to recover as well the damages and costs assessed by the jury, as the costs of increase adjudged by the court; and the defendant might enforce the payment of them by a "*Ca. Sa.*" or "*Fi. Fa.*" If the cattle, &c., replevied, were eloiigned, and the sheriff returned an "*Elongata*" to the "*retorno habendo*," it became the practice

(a) The form of entering up judgment for the defendant, on *demurrer*, under 17 Car. 2., is to pray a writ of inquiry, *without awarding a "retorno habendo."* And it seems to have been the intent of the statute to substitute the proceeding under it in the room of the common law, judgment of awarding a return. However,

where the avowant upon *demurrer* had judgment under the statute, and also to have a return, it was held good on error; for the statute does not take away the judgment at common law, but only gives a further remedy. (Carth. 253.)

(b) Thes. brev. 220.

(c) Lill. Ent. 600.

in latter times, instead of suing a "*Capias in Withernam*" against the plaintiff, or a "*Scire Facias*" against the sheriff or pledges, as formerly; to bring an action on the case against the sheriff, (d) which action might be brought against him for taking *no* pledges, for taking *insufficient* pledges, and without first bringing a "*Sci. Fa.*" against the pledges. (e)

The mode of proceeding was the same where there was a *verdict* for the defendant, except that in such case the damages were assessed by the jury who tried the cause, instead of being assessed under a writ of inquiry.

After *verdict*, or upon *demurrer*, the return of the cattle or goods is *irreplevisable*; (f) but if the plaintiff is *nonsuit*, either before or after verdict, although the defendant is entitled to a return, yet the plaintiff may, under the statute Westminster 2nd., have a writ of "*second deliverance*," the proceeding on which is exactly the same as in replevin, except that in the declaration it is stated, that A. B. was summoned by his majesty's writ of "*second deliverance*," to answer, &c.; (g) and if the plaintiff, in the "*second deliverance*," in *any manner prevail not* in his suit, the defendant shall have judgment for a return "*irreplevisable*." (h) Where the plaintiff in "*replevin*" is nonsuit be-

(d) 18 Vin. 399; 400.

(f) 2 Inst. 340.

(e) Ibid. 1 Wms. Saund. 195. b.

(g) Co. Ent. 589. a.

(h) 2 Inst. 341.

for avowry or cognisance; at common law it is necessary for the defendant to make cognisance or avowry "pro retorno habendo," to entitle himself to damages within 7 H. 8. and 21 H. 8. (c) And the writ of "second deliverance," though a superseas in law to the writ of "retorno habendo," is no superseas to the writ of inquiry of damages under 7 H. 8. and 21 H. 8., or under 17 Car. 2. c. 7. s. 2. Indeed, the 17 Car. 2. has, in effect, taken away the writ of "second deliverance," where the distress is for rent; for of what use can a "second deliverance" be to the plaintiff, when the defendant, if he acts under that statute, may still proceed to judgment and execution, either for the whole rent, or at least for the value of the distress. (d)

However, it is held, that the avowant, &c., may still enter up judgment at common law, or under this statute; and, therefore, if through mistake or otherwise, it cannot be entered up under the statute, the defendant may take his judgment at common law. Thus, where in avowry for rent, the jury inquired of the value of the cattle, but did not inquire what rent was in arrear, it was held that the omission could not be supplied by a writ of inquiry, the statute ordering, *that the jurors who were impanelled to inquire of the issue, should inquire concerning the sum in arrears and the value of the distress*: But the court held that the avow-

(c) 1 Salk. 94.

(d) 1 Vent. 64. 2 Wils. 316.

ant might have his judgment according to common law. (s)

So, when the jury found a verdict for the avowant, and damages to the amount of the rent claimed in the avowry, but did not find either the amount of the rent in arrear, or the value of the cattle distrained, and judgment was entered for the damages assessed, it was held that this judgment was erroneous and could not be amended into a judgment under the statute, because the neglect of such inquiry by the jury could not in any manner be supplied. But the court permitted the defendant to amend, and enter a judgment "pro retorno habendo" at common law. In other cases of replevin, the omission of the jury to find damages for the defendant, whether under the statutes of 7 H. 8. c. 4. and 21 H. 8. c. 19, or under 43 Eliz. c. 2. s. 19, may be supplied by a writ of inquiry. (m)

§. 2.—Whenever the action against an executor or administrator, can only be supported against him in that character; and he pleads any plea which admits that he has acted as such, (except a release to himself, hereafter noticed,) the judgment against him must be, that the plaintiff do recover the debt and costs to be levied out of the assets of the testator, if the defendant have so much, but if not, then the costs out of the defendant's own goods."

(l) 1 Salk. 205.

3 Wils. 442.

(m) Carth. 362. 1 Salk. 205.

otherwise the judgment will be erroneous. As where the defendant pleads "non est factum testatoris," or a release to the testator, or payment by him, or "non assumpsit," though these pleas admit assets.⁽ⁿ⁾ So, if he plead "plene administravit," and it is found against him.^(o) But if the judgment be entered "de bonis propriis" instead of "de bonis testatoris si etc.," it is considered as a mere clerical mistake, which the court below will amend on motion, even after the record has been removed by error, and argument in the court of error.^(p)

Where it is found, by verdict, that the executor has assets to satisfy but a part of the debt, the prothonotaries of the Common Pleas certified, that their course was not to enter judgment of the whole debt, but only of so much as was found to be in the executor's hands.^(q) And the same point was determined by Lord Mansfield in *Harrison v. Barstow*, cited 3 T. R. 688, where the plaintiff having proved a debt of 80*l.* took a verdict on the "non assumpsit" for that sum; and having proved 25*l.* assets unadministered, took a verdict on the "plene

(n) 1 Salk. 310. 1 Atk. 292.
3 T. R. 685. Robinson's Ent.
64.

(o) 1 Roll. Abr. 931. (D.)
pl. 3.

(p) 5 Burr. 2730. From the foregoing, it appears, that an executor ought not to plead

"non assumpsit," or other general issues, without good reason, for if the plaintiff succeeds, the executor will be liable to the costs, "de bonis propriis." (2 Bl. R. 1275.)

(q) Cro. Cas. 319.

administravit" for that sum, and judgment "quando," &c., for the residue. (r)

Probably too, the principle of the case of *Harrison v. Beccles*, will be held to moderate the rule that judgment shall be given against *all* the executors who *join* in the plea of "plene administravit," although the jury find that *one* of them *only* has assets; (s) so that perhaps judgment would now be given against him only, and the rest should go quit; for the judgment is always so entered when the executors plead this plea severally, by several attorneys. (t)

No costs are allowed upon a judgment of assets, "quando acciderint;" (u) and if any come afterwards to the executors' hands, the creditor may sue out a "Sci. Fa." upon the judgments of assets "quando." (x) Indeed, where the executor pleads several judgments outstanding, and the plaintiff takes judgment of assets "quando," the future assets shall, in the first place, be applied to those judgments. (y) Hence there is a difference as to the

(r) See the form of a judgment "quando," post. (and 2 Wms. Saund. 216.) also of entering up judgment on the two issues of "non assumpsit" by testator, and "plene administravit" by defendant, to which plaintiff replied assets since exhibiting the bill, according to the mode suggested.

(6 T. R. 10.)

(s) 1 Roll. Abr. 929. (B.)

pl. 4.

(t) Ibid. pl. 5.

(u) 6 T. R. 11.

(x) Townsend's 2d Judgments, 68. pl. 29. 2 Wms. Saund. 219.

(y) 1 Salk, 312.

future assets, between a plea of "plene administravit" generally, and a special plea of "plene administravit præter" judgments. Where the defendant pleads "non unques executor" or administrator, or a release to *himself*, and it is found against him, the judgment is, that the plaintiff do recover both the debt and costs, in the first place "de bonis testatoris, si," &c., "et si non," &c., "de bonis propriis." (s)

3.—In an action brought against the heir, on an obligation made by his ancestor, in which he has bound his heir, the judgment is for the whole of the land descended, which the heir was seized of at the commencement of the suit. (a) The heir, however, is not liable any farther than to the value of the land descended. But in order that he should be no farther liable, it is necessary for him to contest the action and shew the certainty of the assets. (b) For if issue be taken on the quantity of assets, and it be found that the heir has other lands by descent; (c) or if he plead a fact which he knows to be false, and it be found against him, as where he says that he has nothing by descent and the jury find that he has something, however small and insufficient to discharge the debt, the

(s) Bro. Exec. 64. 1 Roll. Abr. 930. (C.) pt. 2 Cro. Jac. 648.

(a) Dy. 375. b. Flow. 441. 3 Rep. 12.

(b) Flow. 440. 3 Roll. Abr. 71. 1 Str. 685. As to what are assets, see post.

(c) 7 Mod. 44.

plaintiff is entitled to a general judgment for the debt, damages and costs, and to sue out the like execution against him, as on a judgment for his own debt, by "Ca. Sa.," "Fi. Fa.," or "Flegit." (d) So it is where he pleads payment by a co-obligor (e) or pleads a bad plea; (f) though it seems from the present liberality of the courts, the defendant would be permitted to amend his plea, if the defect arose from misleading, and the plea were on honest ones.

Where judgment goes against the heir, on a murder, or by default, the law is the same as above. (g)

But a special judgment for the lands descended, may sometimes be more beneficial than a general one against the heir, where he has pleaded a false plea: for if the heir should not have any lands besides those which he has by descent, the plaintiff can have only a moiety delivered to him, by an "Flegit," on a general judgment against the heir; whereas he is entitled to the whole on a special judgment against the lands descended; and therefore it is holden that the plaintiff may suggest that the heir has particular lands by descent, and may execution of the whole of them. (h)

(d) Plow. 440. 2 Leon. 11.
2 Roll. Abr. 70. (C.) pl. 2.
Dig. 149. Except on the plea
of "non est factum," of the
ancestor. Cro. Car. 437.

(e) Carth. 93.

(f) 1 Salk. 354. 2 Lord
Raym. 793.

(g) Plow. 440. 7 Mod. 44.
20 Car. 2. c. 3. s. 11.

(h) Sir W. Jones 37. 2 Roll.
Abr. 71, 72. (D.) pl. 3.

Where the heir has only a reversion expectant on *the life* of another, he may plead it, and the plaintiff may take judgment of assets "*quando acciderint.*" (i)

4.—In actions upon *contract*, as "*covenant,*" "*assumpsit,*" &c., the plea of one defendant, for the most part enures to the benefit of all; for the contract being entire, the plaintiff must succeed upon it against all or none; and therefore, if the plaintiff fail at the trial, upon the plea of one of the defendants, he cannot have judgment or damages against the others who let judgment go by default. But in actions of *tort*, as "*trespass,*" &c., where the wrong is joint and several, the distinction seems to be this, that where the plea of one of the defendants is such as shews the plaintiff could have no cause of action against any of them, there, if this plea be found against the plaintiff, it shall operate to the benefit of all the defendants; and the plaintiff cannot have judgment or damages against those who let judgment go by default; (a) But where the plea merely operates in discharge of the party pleading it, there it shall not operate to the benefit of the other defendants; but, notwithstanding such plea be found against the plaintiff, he may have judgment and damages against the other defendants. (l)

(i) Dy. 373. Garth. 129. 1 Str. 610.

2 Id. Raym. 284.

(l) 2 Str. 1108, 1272.

(a) 2 Lord Raym. 1372.

CHAPTER VII.

*Of the extent to which property is affected by
Judgments, and of their relation back, &c.*

THE judgment, by intendment of law, has relation to the first day of the term whereof it is entered; (a) and if it be signed in vacation, it relates to the first day of the preceding term; (b) unless, indeed, any thing appear upon the record, shewing that it cannot have such relation: (c) and in actions by original, the judgment relates to the certain day of the term. (d) Therefore, if either party die after a special verdict, and pending the time taken for argument, or advising thereon; or on a motion in arrest of judgment, or for a new trial, judgment may be entered at common law (e)

(a) 3 Salk. 212. 1 Wils. 39.
7 T.R. 21.

(b) Willes, 427, 8.

(c) 3 Burr. 1596.

(d) 2 Wms. Saund. 148.
2 T.R. 576.

(e) 1 Salk. 87. 3 Salk. 116.

6 T.R. 368. * At common law

after his death, as of the term in which the *postea* was returnable, or judgment would otherwise have been given, "*nunc pro tunc*;" (*f*) that the delay arising from the act of the court may not turn to the prejudice of the party. So, in actions against executors or administrators, if the application be made in a reasonable time, the courts will give the plaintiff leave to enter up judgment as of a preceding term when it was signed, "*nunc pro tunc*." (*g*) This, however, is discretionary in the courts, (*h*) and in granting the indulgence the courts will take care that it shall not operate to the prejudice of the defendant, purchasers, or mortgagees, by making the plaintiff undertake not to disturb intermediate payments made by the defendant, (*i*) or impeach judgments obtained in the interval. (*k*)

As against the *defendant* and his heirs, the judgment binds a moiety of all the *freehold* lands and tenements, (*l*) which he or any person in trust for

the death of a sole plaintiff or defendant, before final judgment, abated the suit; so that the judgment could not be entered as of a day after the death. But by 17 Car. 2. c. 8., the death shall not be alleged for error. So, as the judgment be entered within two terms after verdict.

(*f*) 1 Leon. 187. 4 Burr.

2271. 1 East, 408.

(*g*) 6 T. R. 6.

(*h*) 1 Str. 639. Barnes, 282.

1 T. R. 637. 6 Mod. 59.

(*i*) 6 T. R. 11.

(*k*) Lloyd v. Hewell, Adm. H. 37 Geo. 3. K. B.

(*l*) Westm. 2nd, c. 18., and bringing "debt" on a judgment, is no waiver of the lien created by it.

him, (m) were seised of at, or after the time to which the judgment relates. Where there is a term attendant on the inheritance, a judgment, being a lien on the inheritance, affects the term also. (n) But, generally speaking, a judgment does not bind *leasehold* property, which is affected only by the writ of execution; (o) and, as against purchasers only, by the delivery of it to the sheriff. (p) Copyholds are altogether exempt from the effects of a judgment. (q)

As against *purchasers* the relation of judgments to the first day of term, is taken away by the 29 Car. 2. c. 3. s. 14, 15., (r) enacting, "that the judge or officer who shall sign any judgments, shall, at the signing of the same, set down the day of the month and year of his so doing, upon the paper book, docket, or record which he shall sign; which day of the month and year shall be also entered upon the margin of the roll of the record where the said judgment shall be entered. And such judgments as against *purchasers bona fide for valuable consideration* of lands, tenements, or hereditaments, to be charged thereby, shall, in consideration of law, be judgments only from such time as they shall be so signed, and shall not relate to the first day of the term whereof they are en-

See also 29 Car. 2. c. 3. s. 10. (q) 1 Roll. Abr. 838.

(m) 29 Car. 2. c. 3. s. 10. (n) 29 Car. 2. c. 3. s. 10. (r) Extended to Wales and

(o) Godb. 161. 8 Rep. 171. the counties palatine by 8 Geo.

(p) 29 Car. 2. c. 3. s. 16. 1. c. 25. s. 6.

tered, or the day of the return of the original, or filing the bail."

In addition to this, it is enacted by 4 and 5 W. and M. c. 20. s. 2., "that the clerk of the essoins of the court of C. P., and the clerk of the docquets of the court of K. B., shall make an alphabetical docquet by the defendants' names, of all the judgments entered in their respective courts of Michaelmas and Hilary terms, before the last day of the ensuing terms; and of the judgments of Easter and Trinity terms, before the last day of Michaelmas term; under the penalty of 100*l.*," &c. And, by sect. 3., no judgment, not docquetted according to that act, (*s*) shall affect any lands or tenements as to purchasers or mortgagees, or have any preference against heirs, executors or administrators, (*t*) in the administration of their ancestor's, testator's, or intestate's estates.

In Middlesex and Yorkshire, judgments must also be *registered* (*u*) at the register office, in order to give them effect against purchasers and mortgagees. Though it has been decided, that a purchaser *with notice* will be affected in a court of equity, although the judgment be not duly registered, (*x*) and docquetting was held by Lord Chan.

(*s*) See 1 Str. 639. Barnes, 261. 1 Wils. 61. 2 Str. 1209.

(*t*) See 6 T. R. 384. 1 B. and P. 307. 2 Wms. Saund. 7. (5.)

(*u*) 5 Ann. c. 18. s. 4. 6 Ann. c. 35. s. 19. 7 Ann. c. 20. s.

18. 8 Geo. 2. c. 6. s. 1, and 18.

(*x*) Cowp. 712.

Talbot, not to amount to constructive notice. (y) It has been held too, in equity, that a purchaser with notice may be affected by a judgment, though not docquetted. (z) Tamen quære, for the statute is very positive and express. (a)

Freehold lands being bound from the signing and docquetting a judgment, if a party has a judgment for a debt, and the debtor, before execution sued, alienes by fine, and five years pass, or alienes in any other manner; yet the plaintiff may still have execution on the lands. (b) But if a party article to buy an estate, and pay the purchase money, and afterwards a judgment is recovered against the vendor, by a person who had no notice; yet this judgment shall not in equity affect the estates, because, from the time of the articles and payment of the money, the vendor was only a trustee for the purchaser. (c) In such case, however, it must be understood that the consideration paid, is somewhat adequate to the thing purchased; for if the money be but a small sum in respect of the value of the land, this shall not prevail over a mesne judgment creditor. (d) And a mortgagee, for a

(y) 2 Eq. Cas. Abr. 682., but see Amb. 680.	Cas. Abr. 592.
(z) 7 Vin. Abr. 53. 2 Eq. Cas. Abr. 684. Cowp. 712. Sugd. V. and P. 449, 50.	(b) 1 Chan. Cas. 268. 1 Mod. 217. 2 Wms. Saund. 7. (5.) (c) 1 P. Wms. 278. 10 Mod. 468. 2 Eq. Cas. Abr. 683.
(a) 7 Vin. Abr. p. 54. 2 Eq.	(d) 1 P. Wms. 282.

valuable consideration, takes place of the intended purchaser. (e)

As against bankrupts, judgment creditors come in equally with other creditors. (f) But if A. confesses a judgment to B., and then sells and conveys the land for a valuable consideration to C., and afterwards becomes bankrupt, the judgment creditor shall extend the lands in the hand of C., who bought subsequent to the judgment and prior to the bankruptcy; this not prejudicing the other creditors.

(e) *Ibid.* 279.

(f) 1 P. Wms. 737, 739.

THE LAW AND PRACTICE

OF

EXECUTIONS.

CHAPTER I.

*Of the various Writs of Execution now in use ;
their Nature and Objects.*

1. Of "the Extent;" and what property may or may not be taken under it.
 2. Of the writ of "Capias ad Satisfaciendum," and who may or may not be taken in custody under it.
 3. Of the writ of "Elegit," and what property may or may not be taken under it.
 4. Of the writ of "Fieri Facias," and what property may or may not be taken under it.
 5. Of the writ "Liberate."
 6. Of the writs "Habere Facias Possessionem," and "Habere Facias Seisinam."
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EXECUTION, in a practical sense, is the formal method prescribed by law, whereby the party entitled to the benefit of a judgment, or of an obligation equivalent to judgment, may obtain that benefit.

The term Execution is applied generally to any or all of the various means by which this object is

attained; and these means are certain writs issuing out of the court in which the judgment was given, or obligation recorded, under the authority of which the different species of Execution are enforced.

There are, in fact, only three species of Execution: That which affects the person, that which affects the lands or profits of them, and that which affects the goods or chattels of the party chargeable: But these three species are employed by means of different writs, sometimes jointly, sometimes severally, sometimes consecutively, and, as to land, sometimes with greater or less effect, as the rules of law in each particular case may allow.

The principal writs of Execution now in use are

1. " *Extendi Facias.*"
2. " *Capias ad Satisfaciendum.*"
3. " *Elegit.*"
4. " *Fieri Facias.*"
5. " *Levari Facias de bonis ecclesiasticis.*"
6. " *Liberate.*"
7. " *Habere Facias Seisinam,*" or " *Possessionem.*"

And in some cases an "attachment" is resorted to as an execution for the non-payment of money. (a)

SECT. 1.—*Extent, its objects.*

Under a writ of " *Extendi Facias,*" or " *Extent,*" as it is commonly called, may be taken at once, the

(a) 1 Bos. and Pul. 336.

body^(b) and goods^(b) of the party chargeable, all the lands and tenements^(b) which he had at the time of entering into those particular obligations, ^(c) offices^(d) or debts, ^(d) by which he is rendered liable to this writ, ^(c) and all the lands which he may have acquired afterwards, ^(e) into whose hands soever they may have passed: ^(c)—Also, in the king's case, debts found by inquisition to be due to the king's debtor, ^(f) though due upon simple contract:—and a debt due by simple contract, ^(g) as well as by specialty, may be found and seized to the third degree. ^(h)

This writ is applied, in one case, where land only is affected by it. ⁽ⁱ⁾

Though lands held for term of life are subject to an extent only during the continuance of the estate in the party that created the charge; and though the land a man hath in right of his wife, is liable only during the lives of husband and wife together; ^(k) yet, lands held in tail may be taken in the hands of the heir, on an extent for the king's debt due from the ancestor, ^(l) unless it were debt due by simple

^(b) 13 E. 1. 27 E. 3. c. 9. ^(f) 21 H. 7. 12. 16. Godb. 23 H. 8. c. 6. 33 H. 8. c. 39. 291.

3 Rep. 13.

^(g) Godb. 296.

^(c) See post, and also as to land held in the name of another.

^(h) Parker, 259, 260.

⁽ⁱ⁾ See post.

^(k) 2 Roll. Abr. 156, 7.

^(d) 13 Eliz. c. 4. 33 H. 8. c. 39.

^(l) 33 H. 8. c. 30. Dal. Sher. 124.

^(e) Flowd. 72.

contract, (*m*) or the land aliened before process. (*m*)

A joint-tenancy is severed by an extent. (*n*)

Lands held in ancient demesne, are subject to an extent: (*m*)—Also, lands held in trust, at the time of execution sued; (*o*) but not copyholds.

So, it seems, an advowson in gross, as it comes under the description of "Tenement," and reversions on leases for lives or years. (*p*)

Further specifications will be found under the head of "Elegit," for an extent seems to include all that can be taken under an elegit.

Terms for years may be taken as other chattels, under an extent; but further particulars as to what is included in the term "goods and chattels," will be given under the head of "Fieri Facias."

An office of trust cannot be taken under an extent, because it is not assignable; and nothing shall be taken in execution that may not be assigned over. (*q*)

The term "Extent" is applied indifferently to signify either the particular writ of "Extendi Facias," or the act of the sheriff in the execution of this writ, and in the execution of the writ "Elegit." "Extent," when applied to the act of the sheriff, means no more than full valuation, by a jury under his authority.

(*m*) 2 Inst. 397. 7 Rep. Anderson's case. pl. 5. 3 Leon. 113. Moor. 36. an advowson appendant passes with the manor or land to which

(*n*) Gilb. Exec. 41.

(*o*) 29 Car. 2. c. 3. s. 10.

(*p*) Dy. 373. 1 Roll. Abr. 894.

it belongs.

(*q*) Owen, 70.

From this double application of the same term, some confusion seems to have arisen in the books; for the operation of the writ "Elegit," is by far more limited than that of the writ "Extendi Facias;" and when it is stated, that this object or that, is or is not *extendible*, it is often left uncertain whether this expression refers to an "Extendi Facias," or an "Elegit."

SECT. 2.—*Capias ad Satisfaciendum.*

By the writ of "*Capias ad Satisfaciendum*," the persons of parties chargeable are taken in execution; but peers of the realm, Scotch or Irish, (a) or their wives, are not subject to this writ, (except where they have bound themselves in a Statute Merchant, Statute Staple, or recognizance in the nature of a Statute Staple,) (b) nor members of parliament, the king's servants, (c) foreign ministers and their servants, (d) persons attending a court of justice, *eundo morando et redeundo bonâ fide*, with relation to a cause which demands their attendance; (e) (commissioners of bankrupt are a court of justice in this respect, (f) and barristers on the circuit considered in attendance); (g) Nei-

(a) Lee's Pract. Dic. 240.

(b) 27 E. 3. 23 H. 8. c. 6.

(c) 5 T. R. 686.

(d) 3 T. R. 79. there is a particular regulation concerning the

registry of these servants.

(e) 1 H. B. 636.

(f) 5 T. R. 209.

(g) 1 H. B. 636.

ther does it lie against executors or administrators for the debt of their testator or intestate, until a "devastavit" has been returned against them :—Nor against an heir after judgment against him in an action of debt on the bond of his ancestor, unless he has aliened the land of his ancestor, and sufficient does not remain to satisfy the judgment, (h) has pleaded any plea which he knew to be false, (except "non est Factum,") or has suffered judgment by demurrer, "nil dicit," or confession, without confessing assets descended. (i).

By the tenor of a common-law recognizance (which tenor must be strictly followed in execution) execution lies only against the lands and chattels of the conusor : but in the King's Bench a "Capias" lies on a bail recognizance, because parties there are supposed, from the original jurisdiction of the court, to be committed on some criminal prosecu-

(h) 3 and 4 W. and M. c. 14. s. 5, 6. liable to the debt, into whose hands soever they may come

(i) 2 Wms. Saund. Rep. 7. note 4. where it is said on the authorities of Sir. W. Jones, 87. Carth. 93. that the heir is not rendered personally liable to the discharging of his ancestor's debt, for pleading a false plea to a "Scire Facias" on a judgment against his ancestor.—For the lands being already charged by the judgment against the ancestor, are after such judgment; so that the plaintiff may pursue his redress, notwithstanding any false plea by the heir in such case. But when the heir alienes before judgment in an action brought against himself on the bond of his ancestor, the lands cannot be touched in the hands of a bona fide purchaser.—3 and 4 W. and M. c. 14. s. 6.

tion; and bail (who are the parties generally concerned in these recognizances) are liable in the same manner as their principal. (k) However, on a recognizance taken in the K. B. under 3 Jac. c. 1. (made perpetual by 3 Car. c. 4. s. 4.) on bringing writs of error, no "Capias" lies; because this is not ~~bailing~~ a prisoner in their own court; but by virtue of the statute, which gives no "Capias." Neither, for the reason just before given, does a "Capias" lie against bail in the Common Pleas, (l) Chancery, Exchequer, or Exchequer Chamber; nor against other the consors of a common-law recognizance in those courts.

A "Capias" does not lie against the tenant in "dower," assize, or real actions, for damages; no statute having given it in those cases; (m) and this writ at first lay only for the king's debt, for his fine in actions of trespass, and on indictments pro delictis majoribus. It was afterwards given to the subject in various actions, by the following statutes, 25 Ed. 3. c. 17. 19 H. 7. c. 9. 23 H. 8. c. 14, 15. 4 Jac. 1. c. 3. 8 and 9 W. 3. c. 11.

An infant is subject to this writ, (n) and a feme covert; alone, (o) where the judgment was recovered against her before marriage; and jointly with her husband, where in an action against husband and

(k) Gilb. Exec. 69.

(m) Gilb. Exec. 6.

(l) Roll. Abr. 897. Lutw.

(n) 2 Stra. 1217. 1 Bos. and 1280. Moor, 274. Cro. Jac. Pul. 480.

645.

(o) 4 East, 521.

wife ; but the practice is now to discharge her in this case. (p)

The writ of “*Capias ad Satisfaciendum*” lies after judgment in every instance where the defendant was subject to a “*Capias ad Respondendum*” before, (q) and plaintiffs are subject to it where judgment has been given against them for costs. (r)

SECT. 3.—*Elegit.*

Lands were not originally liable to execution at the suit of a subject (except on judgment against the heir in an action on the bond of his ancestor) (a) and the statute of Westminster the second, chapter 18, which first made them chargeable, gives the plaintiff his election to go against the goods and profits ; or against the goods ; and a moiety of the lands of the defendant ; which election has given name to the writ of “*Elegit.*”

Under this writ then, may be taken in execution the goods and chattels of the party chargeable, and a moiety of the lands which he had, at the time of judgment given, recognizance taken, or afterwards ; (b) into whose hands soever they may have passed.

(p) Tidd's Practice, 1026. 5th edit.

(q) 3 Rep. 12.

(r) 23 H. 8. c. 15. 4 Jac. 1. c. 3.

(a) 3 Rep. 12.

(b) 2 Inst. 395. Dalt. Sher. 134. If two have judgment, and one sues an *Elegit* and has a moiety of the defendant's land,

And not only lands of which the defendant is or was seised in possession, but also reversions on leases for lives or years ; and therefore a moiety of a reversion may be taken, and the plaintiff shall have a moiety of the rent. (c)

Lands in ancient demesne, (a) rent charges, (e) terms for years, (f) and lands before in execution at the defendant's suit, (g) are liable to an "*Elegit*."

Lands held in trust for the defendant *at the time of execution sued*, may also be taken ; (h) for if the trustee has conveyed them away before execution, though, after judgment, they cannot be touched. (i) But copyhold lands (which are, as it were, held in trust by the lord for his copyholder) (k) cannot be taken in execution ; because, the freehold is in the lord, and the copyholder is no more than a tenant at will, according to the custom of the manor :

and afterwards the other sues an *Elegit*, he shall have but a moiety of the residue, (Cro. El. 482. 2 Brownl. 97) ; yet, if both judgments are of the same term, which is but one day in law, each may take a moiety of the whole ; (Hard. 27.) :—so that if a party takes two separate warrants of attorney, each for the half of his debt, and enters up judgment on both, in the same term, he obtains the *whole* of the defendant's land : Whereby the antiquated feudal intent of the

statute is defeated, as to some few judgments ; but still remains in force as to all others. *Quod nota.*

(c) 1 Roll. Abr. 894. pl. 5.
3 Leon. 113. Moor, 36.

(d) 2 Inst. 397.

(e) Bro. *Elegit*, 13. Moor, 32.

(f) 2 Inst. 396.

(g) 4 Rep. 65. b.

(h) 29 Car. 2. c. 3. s. 10.

(i) Com. Rep. 226. Com. Dig. Exec. C. 14.

(k) Per *Periam*. C. B. in the argument of *Chudleigh's Case*. Bacon on Uses.

Besides, it was thought unreasonable that the lord should have a new tenant put upon him without his consent. (*l*)

An advowson in gross cannot be taken under an "Elegit," because the moiety of it cannot be set out, nor can it be valued at any certain rent towards payment of the debt; (*m*) nor a rent seck, (*n*) nor a parson's glebe. (*o*) But the wife's lands in the husband's possession are liable during coverture; and, it is said, the lands of a bishop. (*p*)

Lands held in tail are liable only during the life of the party that created the charge. But a joint-tenancy is severed by an "Elegit" against one of the joint-tenants. (*q*)

(*l*) 3 Rep. 9. a. The reader will readily perceive, that these reasons, though prevalent in 1815, are of feudal origin; the only way in which the lord's interest can at this day be affected by the introduction of a new tenant, is advantageous to him, as he receives a fine for admittance; his consent thereto cannot be refused, (2 T. R. 484); and, as for his will, 'tis altogether circumscribed and determined by the custom of the manor; yet, under favor of this feudal antiquity, have copyhold lands, for so many centuries, been exempted from execution; while the ordina-

ry freehold landlord, whose early reversion and general interests in the land, are intimately and seriously affected by its proper cultivation; and who, for that reason, has, with care sought out a tenant in whom he might confide:—*This* landlord is not unfrequently exposed to the detriment of having a stranger thrust upon him, by the effect of an execution, without his knowledge or consent. *Quod nota.*

(*m*) Gilb. Exec. 39.

(*n*) Cro. Eliz. 656.

(*o*) Gilb. Exec. 39.

(*p*) Dalt. Sher. 136.

(*q*) Gilb. Exec. 41.

SECT. 4.—*Fieri Facias.*

By the writ of "*Fieri Facias*," authority is given for the seizure and sale of every thing that is a chattel, belonging to the defendant, except his necessary wearing apparel. *(a)* Even of two gowns, one may be taken. *(b)*

Leases or terms for years, *(c)* corn growing, and such "*fructus industriales*" as would go to the executor, *(d)* fixtures which were erected and may be removed by the tenant, *(e)* an annuity granted by the king for years, *(f)* money in defendant's possession, *(g)* are liable to execution under this writ; but not apples on trees, those fixtures, furnaces, &c. which belong to the heir, and may not be removed by the tenant, *(h)* bank notes, *(i)* money in the sheriff's hands, being the surplus of money levied under a former execution against the defendant's goods, at the suit of the same plaintiff, *(k)* or damages recovered by the defendant against the sheriff in another action, *(l)* or money levied under an execution at the suit of the defendant; *(m)* nor goods pawned, demised for years, distrained, *(n)* or taken and in custody of the sheriff, upon a former execution; *(o)*

(a) Gilb. Exec. 19. 3 Rep. 12.

(b) Comb. 356.

(c) Gilb. Exec. 19.

(d) Ibid. Owen, 70, 71.

(e) 1 Salk. 368. 3 Atk. 13.

(f) Com. Dig. Exec. C. 4.
8 T. R. 477.

(g) Doug. 231.

(h) Gilb. Exec. 19. 1 Salk. 368.

(i) 9 East, 48.

(k) 4 East, 510.

(l) 2 New Rep. 376.

(m) 9 East, 48.

(n) Bac. Abr. Exec. Willes,
131.

(o) Show. 173. 3 Mod. 236.

nor things which cannot be sold, as deeds, writings, &c. (p)

But goods pawned may be taken upon satisfaction of the pledge, (q) and goods demised, subject to the right of the lessee. (r)

Goods fairly vested in trustees, under a settlement, (s) or agreement for a settlement, (t) before marriage, for the benefit of the wife, cannot be taken on a "Fieri Facias" against the husband; though there be no inventory, and the husband is in possession; (his possession being consistent with the deed;) but not so where the settlement is fraudulent, or the husband's possession inconsistent with the deed.

Provided notice be given of the bankruptcy, at any time before the actual sale of goods seized after the act of bankruptcy, under a "Fieri Facias," a bankrupt's goods cannot be sold under the execution. (u)

A mere equitable interest, in a term, cannot be taken on a "Fieri Facias." (x)

(p) Cas. Temp. Hardw. 53.

(q) Bro. Abr. pledges, pl. 24.

(r) 8 East, 476. 479.

(s) Cowp. 432. 3 T. R. 618.
8 East, 477.

(t) 1 Eq. Cas. Abr. 148. 8
T. R. 521. 6 East, 357. By
this last case, it seems, also,
that goods vested in trustees
for the wife, under a bona fide

settlement, on sufficient consideration, and made without intent to defraud creditors, cannot be taken on an execution against the husband, though the settlement were made after marriage; (it having been made before action commenced.)

(u) 1 Lord Raymd. 252.

(x) 8 East, 467.

Although the goods of a testator cannot be taken in the hands of an executor, for his (the executor's) own debt; yet, if an executrix use the goods of testator as her own, and afterwards marry, and then treat them as the goods of her husband, she shall not be allowed to object to their being taken in execution for her husband's debt. (y)

The goods of a bankrupt may be taken 'till his certificate is *allowed*, but not after, though the writ issued before. (z)

Under the old writ of "*Levari Facias*," the profits only of land, and goods and chattels were taken in execution; and these, in the superior courts, were sometimes sold, sometimes delivered without appraisement by jury, to the plaintiff; in the inferior courts, as in the country or manor courts, they were never sold or delivered on this writ, but remained in the hands of the sheriff, as a mode of compelling payment, 'till he received a further writ, "*de executione faciendâ*."

In these latter courts the "*Levari Facias*" is still continued, and is sometimes adopted on recognizances in chancery.

At the time when generally used in the superior courts, it was only there applied in execution for the king's debt, and on recognizances; for these instruments, before the statute of Westminster, 2nd. bound the profits of land, (a) (such as rents,) to

(y) 1 Bos. and Pul. 293.

(a) Gilb. Exec. 4, 6, 27, 30.

(z) 1 T. R. 361. 1 Bos. and 2 Wms. Saunders, 68. a. Pul. 427.

the seizure of which profits, the term "Levari" was more especially applied; as was the term "Fieri," to the seizure of goods: But under the "Fieri Facias" all goods and chattels may be taken which were liable to execution by a "Levari Facias." (b)

As the writ of "Elegit" takes not only goods and chattels and the profits of land, but also the land itself, in execution, at an appraisement by jury,—and as the goods taken by a "Fieri Facias" may immediately be sold, the writ of "Levari Facias" has fallen into disuse. (c) But at the present day, if by the sheriff's return to a "Fieri Facias" or "Elegit," it appears that the defendant is a beneficed clerk, having no lay fee, a "Levari facias de bonis ecclesiasticis," is directed to the bishop of his diocese, who is thereby authorised to seize and sell the profits of the benefice. (d)

SECT. 5.— *Levari, or Sequestrari Facias de bonis ecclesiasticis.*

Or, instead of a "Levari Facias" de bonis ecclesiasticis," a "Sequestrari Facias" may be issued for the same purposes. (e)

(b) 2 Inst. 394. Com. Dig.
Exec. C. 4.

(d) Gilb. Exec. 26.

(e) Tidd's Prac. 1003.

(c) Gilb. Exec. 31.

SECT. 6.—*Liberate.*

By the writ of "*Liberate*," legal possession of lands and tenements is given, after inquisition and valuation under an "*extent*" or "*Elegit*," (a) and

SECT. 7.—*Habere facias Seisinam, or possessionem.*

By "*Habere facias Seisinam*," or "*possessionem*," the actual seisin or possession after judgment in real actions or ejectment. (a)

The reason why, formerly, 'till the time of Edward the first, personal property was subject to execution, and land exempt, except on the king's suit, was, because the lands were liable to answer the duties to the feudal lord, which were probably as heavy a charge as they could then support, and the only one considered of any importance in those days. It was for the same reason that the statute, which subjects land to execution, allows only a moiety to be taken.

The person of a debtor could not be taken in execution for debt, (b) until a statute was passed for that purpose, in the 25th year of the reign of Edward the third, because every man was obliged, by the tenures of those times, to serve the king in his wars; and at home the several lords, according to the distinct natures of their tenure.

(a) 1 Vent. 41, 42. forms, Rast. Ent. 598. a. b. 1 Lutw. 429. Tidd's Pract. forms, 361. (a) 2 Bac. Abr. Exec. 717. (b) A "*Capias*" was given in "Account" only, by the Statute of Marlbridge, c. 23. and Westm. 2. c. 11.

Subsequent statutes have made the body liable, generally, to execution, to the extent it is at present ; but the restriction on the moiety of freehold lands, and the total exemption of copyhold, still remains.

The old system, however well adapted to a nation living in perpetual warfare, was by no means calculated for the circumstances of a commercial people ; and the trading interest, superseding that of the feudal lord, very soon required and obtained by statute, as we have seen, the right of taking lands in execution, and of confining the person of the debtor, in order to compel him the sooner to satisfy his creditors.

The king, however, at all times, by his prerogative, might have execution of body, land, and goods, (c) but still under this restriction, that the land was not extendible, while the chattels were sufficient, and the debtor ready to answer the debt.

Also, in case of a private person, the whole land descended, was always liable to execution in an action of debt against an heir upon an obligation made by his ancestor: (d) For that action having been always allowed at common law, the plaintiff, if judgment was given for him, could have no other remedy than the land descended ; it being obviously contrary to justice, that in such case the heir's own person or goods should be charged for the debt of his ancestor, unless the heir endeavoured illegally to deprive the plaintiff of his remedy.

(c) Plow. 441. 3 Rep. 11. (d) Ibid.

Again, if A had granted for him and his heirs, a rent out of his land to B and his heirs; in this case, the lands being bound, the heirs of A were liable to make good the grant, as far as they had assets, by descent from the grantor; ^(e) and this was allowed at common law, because the grantee having it in his power to distrain for the rent, it was equal, whether the land was to answer the rent by distress, or by execution upon judgment in a writ of annuity.

(e) 1 Roll. Abr. 226. Dy. 334. b.

CHAPTER II.

Of the parties to execution, and the time of suing it out, and herein of "scire facias," and the circumstances which render the suing out of that writ a necessary antecedent to execution; viz.

1. Change of Parties, as by
 1. A. Death,
 1. B. Marriage,
 1. C. Bankruptcy.
2. Contingency of execution after judgment, or obligation thereto equivalent; as on
 2. A. Future breaches of covenant,
 2. B. Future effects of discharged insolvent, or,
 2. C. Party twice bankrupt,
 2. D. Assets "quando acciderint,"
 2. E. "Devastavit" returned against Executors,
 2. F. Conditioned recognizances, as
 2. G. Those entered into by bail, or
 2. H. Bail in error.
3. Lapse of time; as where execution has been delayed more than a year and a day.

THE party in whose favour judgment is given, may sue out execution on the party against whom judgment is given, at any time within a year and a day, (a) from the signing (b) of such judgment.

But where any new person, (that is, one not originally party to the judgment) is to be charged

(a) Gilb. Exec. 43.

(b) Co. Litt. 505.

or benefited by the execution, (c) or where more than a year and a day have elapsed since the signing of judgment, (d) and that delay has not been caused by the party chargeable, (e) new measures become necessary before execution can be proceeded in.

In cases such as these, it *may* be presumed, from the length of time elapsed, that judgment has been satisfied ; it *may* be presumed that the party newly to be charged, has some defence to offer ; and the party newly to be benefited, ought certainly to shew that his claim rests upon sufficient authority.

In order then to prevent the obtaining of any undue advantages by surprize, it is requisite, before proceeding to execution, under the circumstances above stated, to sue out the writ of "scire facias," by which the party to be charged, is warned to shew cause why execution should not issue against him, and to which he may make any defence which the nature of his case will admit.

Sometimes, again, execution is contingent, after judgment, on the existence of certain circumstances, which must be proved by the party charging, before he can proceed to execution.

Of this nature are executions where judgment is entered (under the statute 8 & 9 W. 3. c. 11. s. 8.) in an action of debt on bond, for non-performance of covenants or agreements contained in any in-

(c) *Ld. Raym.* 245.

(e) 2 *Burr.* 660.

(d) *Co. Litt.* 290, b. 291, a.

denture, deed, or writing, and remains as a security to answer such damages as may be sustained by a *further* breach of any covenant, contained in the same indenture, deed, or writing.

It is obvious, that under so protractedly an impending judgment, it would at any time be in the plaintiff's power, most unjustly to oppress the defendant, unless precautions existed for the prevention of such a grievance.

In order, therefore, to prevent any undue surprise on the party chargeable, the plaintiff in such case, is obliged, before he proceeds to further execution on any farther breach of covenant, to sue out a writ of "*scire facias*," which, after specifically suggesting such further breach, warns the defendant to shew cause why execution should not issue against him.

It will be shewn in a subsequent section, that the "*scire facias*" on a general judgment, to obtain special execution (under the 5th Geo. 2. c. 30. s. 9.) against the future effects of a bankrupt who has not paid 15s. in the pound: as also the "*scire facias*" on a general judgment, to obtain special execution (under the Lord's act) against the future effects of an insolvent debtor, are analogous to this "*scire facias*" for further execution, under the 8 and 9 W. 3.

In the nature of judgments, and equivalent to them, (f) (inasmuch as *admitting* what a judgment

(f) Lit. Rep. 89.

would have *ascertained*) are, recognizances ; being obligations solemnly acknowledged and entered of record. The common law (g) recognizance is affected therefore, precisely in the same manner as a judgment by the principles and rules which regulate the writ of "scire facias ;" and whenever any new person is to be charged (h) or benefited by the execution on such recognizance, or more than a year and a day have elapsed since *the time of payment* (i) appointed in it, (the delay not proceeding from the

(g) For the promotion of credit and furtherance of commerce, "statutes merchant" and "staple" (which are a species of recognizance) and "recognizances in the nature of a statute staple" (under 23 Hen. 8.) are by statutory provision wholly exempted from the operation of "scire facias : " so that the conusees of those statutes, or their *executors*, may, *at any time*, sue out execution without a "scire facias." Nay, if the conusor be returned, dead by the sheriff, execution may be taken out without "scire facias," against his lands in the hand of his heir, or *terretenants*. (2 Williams' Saunders, 71, c. and the authorities there quoted.) In case of execution unjustly sued out on these instruments, where any

matter might have been alleged in discharge of it, there was remedy by "audita querela." *Quod nota.*

These instruments, by which the *whole* of the conusor's land was bound to the payment of his debt, were a security preferable to a judgment, under which only *half* the lands are liable, (by writ of "elegit"). But they are now seldom or never in use ; and seem, as a security, to have given place to mortgages, by which the land itself is immediately vested in the mortgagee.

(h) 6 Bac. Abr. 108, scire facias.

(i) 1 Roll. Abr. 899. 2 Inst. 471. When no time is specified for payment, the year is computed from the day of acknowledging the recognizance.

party chargeable) no valid execution can be had without first suing out a "scire facias."

Recognizances entered into by bail, or as a security for the performance of conditions, seem to be in the nature of *conditional* judgments; that is, if the principal, or any one on his behalf, after judgment against him, pay what is required by law, or surrenders his person, or is surrendered by his bail, or taken by the sheriff, the bail are discharged; but if, (the debt remaining unpaid) a *capias* be sued against the principal, and the sheriff return "non est inventus," the recognizance is forfeited, and the bail fixed.

Here, therefore, and on the breach of any other conditions secured by recognizance, to prevent surprise or undue advantage, the party seeking execution must, before he can fix the bail or conusors, shew the existence of certain circumstances, which alone can render the bail or conusors liable. Execution on such a recognizance being contingent on those circumstances, the party seeking execution, alleges in a writ of "Scire Facias," the event of the contingency; which writ, after stating, among other things, that the principal has not paid the sum required by law, nor rendered his person in satisfaction; or that the conusor has broken the stipulated conditions; warns the bail or conusor to shew cause why execution should not issue against them on their recognizance. (k)

(k) Before the statute Westminster 2nd (13 Ed. I.) the

A "Scire Facias," then, is a judicial writ, founded on some matter of record, and having for its object, (as far as it relates to execution,) the prevention of undue surprize, by interposing itself as a warning between judgment (or obligations in the nature of and equivalent to judgment) and execution,—whenever any new party is to be charged or benefited by such execution,—whenever such execution is contingent, after judgment or obligation thereto equivalent, on the existence of certain circumstances, to be first proved by the party charging:—and, lastly, whenever execution has been delayed beyond a year and day after judgment signed or recognizance entered into, that delay not arising from the party charged. (1)

This writ, containing a brief statement of the plaintiff was obliged, on a recognizance, to bring an action of debt, after the year, before proceeding to execution; and, in personal actions, to sue out a new original, wherever a "Scire Facias" is now brought to revive judgment; *See the reasons, Tidd's Prac.* 1046. And it must be observed, that, at this day, the plaintiff may proceed at his election, on a recognizance or judgment, by "Scire Facias," or action of debt. Except against the heir or terretenants; for the heir, to some intents, is charged only as *tenant* of the lands,

and therefore does not, like the executor, personally represent his ancestors. (2 *Wms. Saunders* 6, note 1. 72. 2, 7, note 4. 3 *Rep.* 12.)

(1) The writ of "Scire Facias" is also applied on some other occasions of rarer occurrence, and unconnected with the subject of this volume. Such are the "Scire Facias" for the repeal of letters patent. The "Scire Facias" against the executors or administrators of a judge, to certify a bill of exceptions sealed by him. The "Scire Facias" to have execution against the sheriff for the

circumstances, and referring to the record on which it is sued out, is directed to the sheriff, who is ordered to warn the party against whom it issues to shew cause why execution should not be awarded against him.

On the return day of the writ, the sheriff either returns "Scire Feci," that is, that he has warned the party; or, "Nihil," that is, that the party has nothing by which he can warn him. Where the sheriff returns "nihil," the party must sue out a second or "alias" writ of Sci. Fa. (w) and if the sheriff return "nihil" also to the second writ, and the party do not appear, there shall be judgment against him. (n) In the Common Pleas, where the "Sci. Fa." is to revive judgment against the defendant himself, who was party or privy to the judgment, one "Sci. Fa." with "nihil" returned, is sufficient; (o) but there must be fifteen days between the teste and return of such writ. Judgment

value of goods seized by him under a "Fieri Facias" and returned "rescued," (an action on the case is the more usual remedy.) The "Scire Facias" against the pledges in replevin, to have execution on the sheriff's returning "Elongavit" to a writ of "Retorno habendo." The "Scire Facias" against the terretenants, upon a writ of Error, to reverse a fine or recovery: and the "Scire Facias ad rehabendam

terram," where the tenant, under an "extent" or "elegit," has been tendered his debt with all costs and damages, or it has been satisfied by some great casual profit; and under an "extent," always, when the debt is satisfied. See 2 Wms. Saunders 71, b. w. and 6 Bac. Abr. (Scire Facias) 109.

(w) 4 Inst. 472. Cro. Jac. 59.

(n) Dy. 172. 168.

(o) Dy. 168. a.

shall also be against the party warned, if he make default, on the sheriff's return of "*Scire Feci.*" (p) So, where a "*Sci. Fa.*" is sued out on a joint judgment against two, if it be returned that one was summoned, and he makes default, and that the other has nothing, the plaintiff may have execution for the whole against him who was summoned and made default. (q) So, if it be returned, that one of them is dead, and that the other was summoned, and he makes default.

If the defendants appear to the "*Sci. Fa.*" the plaintiff must declare against them, (r) and they are let into any defence which the nature of their case admits.

(p) Com. Dig. (Pleader 3. L. 8, 9.)

(q) 1 Roll. Abr. 890. (s) pl. 1.

(r) See the form, Tidd's Prac. forms, 407, 463. Four days are allowed for the appearance of the party summoned, or against whom a return or two returns of "*nihil*" have been made, and in the K. B. a rule must be entered for his appearance: If he appears, a copy of the writ or writs, with a statement of the sheriff's return, is delivered to him, in the nature of a declaration, and a rule to plead entered, and plea de-

manded as in a new action: If there be no plea within the time limited, by the rule execution is awarded: If there is no appearance to a "*Scire Facias*," the party suing it out pays the costs: (See 8 and 9 W. 3. c. 11.) If an appearance is entered, and execution is awarded, either for want of a plea, or the issue being determined against the plea, the party appearing is liable for costs.

Before an award of execution can be entered up, the writ or writs of "*Scire Facias*," with the sheriff's return, must be enrolled, and also filed.

But, although the intent and principle of the proceeding by "Scire Facias," appears from the foregoing observations; to be that of preventing surprize, and giving notice to the party chargeable; yet, by the general practice, this intent is wholly nullified; for the defendant may be summoned or not, as the plaintiff thinks fit; and if the plaintiff, as he may do, takes out two writs of "Sci. Fa." *with* "nihil" returned to each, the defendant never has any notice at all: (s) But if in such case he be aggrieved, and has any matter which he might have pleaded to the "Scire Facias" in discharge of execution, he may relieve himself by *auditâ querelâ*; (t) and, where the case is clear, by motion in court. (u)

However, although, by this practice, the proceeding in "Scire Facias," is reduced to little more than a form; yet, a true conception of its original intent and principle, is absolutely necessary for ascertaining the occasions, and directing the application, even of this form.

The "Scire Facias" is considered as an action, and in the nature of a new original; (x) it would, therefore, be foreign to the purpose of this volume to enter into a longer detail of the practice and proceedings (y) on that writ. The reader may find

(s) 2 Wms. Saunders 72. s.

(t) 1 Salk. 93. 1 Wils.

98.

(u) 1 Ld. Raymd. 439.

(x) Skinn. 682.

(y) The "Scire Facias," in K.

B. is made out by the plaintiff's attorney, and in actions by bill is signed by the signer of the writs, but in actions by original, by the filacer. In C. P. where there are two writs of

them at large in Mr. Williams's note on the case of *Underhill v. Devereux*, (2 Saunders' Rep. 71. a.) in Mr. Tidd's Practice, (2nd vol. 1076,) and in Bacon's Abridgment, ("Scire Facias," vol. 6, 102.) It will only be requisite here, to point out the occasions on which the suing out a writ of "Scire Facias" is a necessary antecedent to execution.

"Scire Facias," the first is made out and signed by the filacer, but the second made out by plaintiff's attorney, and signed by the prothonotary. (Tidd 1076.) The plaintiff's attorney must have a new warrant to sue out the "Scire Facias;" and, because it is considered a new action, there is no necessity for an order to change the attorney in the former suit. (2 Lord Raymd. 1048, 1252. 7 T. R. 337.) However, to some intents it is considered a continuation of the former suit; as where executors, when their testator had agreed in the preceding suit, that no writ of error should be brought, were prevented bringing error, (a "Scire Facias" having issued against them,) under surmise, that the "Scire Facias" constituted a new action; and so, not affected by any agreement relating

to the preceding suit. (1 T. R. 388.) The "Scire Facias," on a judgment, must be brought in the county where the venue was laid in the original action; but on a return of "nihil" to the writ against the personal representatives, the plaintiff, upon a "testatum," may have a "Scire Facias" against the heir and terretenants in a different county. (Hob. 4. Cro. Car. 313.) On a recognizance in C. P. the "Scire Facias" may be brought in the county where the recognizance was taken, or the county where it is recorded. In K. B. the county where the record is. (Hob. 195.) And in case of a bail-recognizance, if entered as taken at a judge's chambers in Serjeants' Inn, the "Scire Facias" may be sued out in London. (8 Mod. Rep. 290.) The "Scire Facias" must be sued out of the court in which the record is, whereon

This object will, perhaps, be best effected under three heads, or divisions:—

- 1st. Where any new party is to be charged or benefited by the execution; as in cases of death, marriage, or bankruptcy.

the writ is grounded. (Com. Dig. Pleader, 3. L. 3.) Sheriff may be called on for the return on the return day of the "Scire Facias," where the first action was by bill; and on the "quarto die post" of the return day, where the first action was by original. (Tidd 1077, 1079.) In K. B., by bill, "Scire Facias" is made returnable on a day certain; and where there is only one writ, there need be but four days exclusive, between the teste and return of it. But every "Scire Facias," by original, in K. B. ought to have 15 days between teste and return, and be made returnable on a general return day. In C. P. the "Scire Facias" is returnable on a general return day. The "Scire Facias," on a judgment, may be tested at any time after the judgment, or first day of the term, to which it relates. On a recognizance by bail it ought to be tested, where the proceedings are by

bill, on the return day, or where by original, on the "quarto die post" of the return day of the "Ca. Sa." against the principal. It seems that a "Scire Facias" is amendable at the discretion of the court. (id. ibid.) Writ of Error does not lie on "Scire Facias" against bail, from K. B. to Exchequer chamber, but to parliament. (id. 1100.) When a "Scire Facias" is brought in K. B. upon a judgment of an inferior court, it must appear in the writ itself, whether the judgment came thither by "certiorari," or writ of error; for if it came in by "certiorari," the "Scire Facias" ought to shew the particular limits of the inferior jurisdiction, and pray execution within those limits. (Id. 1055.) "Scire Facias," being a judicial writ, must follow the nature of the judgment; therefore, if a joint judgment be obtained against two, the "Scire Facias" must be against both. (2 Salk. 598.)

2nd. Where execution is contingent, *after* judgment or obligation thereto equivalent, on certain circumstances, to be first proved by the party proceeding to execution; as in the case of further breaches of covenant, where judgment on some prior breach remains as a security against them.

3rd. Where the regular time for suing out execution has elapsed, that delay not having arisen from the party chargeable.

1. A. *Change of parties by death.*

When either plaintiff or defendant, in a personal action, dies after final judgment, and before execution, a "Scire Facias" must be sued out by or against his executors or administrators; (2) or, if the defendant dies, and it is necessary to charge his land; against his heir and terretenants. If any of the executors or administrators are *femes covert*, their husbands must be made parties to the "Scire Facias;" and though an executor or administrator become bankrupt, he may still proceed by "Scire Facias," as the bankruptcy does not affect his representative character. (a)

If the demandant or tenant die after judgment in a real action, the "Scire Facias" must be sued out by or against the heir. (b) And, if the demandant, in a writ of consenage, or other real

(2) 6 Bac. Abr. 112. ("Scire Facias.")

(a) 2 Wms. Saunders, 72. o.

(b) 6 Bac. Abr. 113. ("Scire Facias") and the authorities

there quoted.

action, in which land and damages are recovered, has judgment and dies, the heir shall sue out "Scire Facias" for execution as to the land, and the executor as to the damages. But, if a man has judgment for the arrearages of rent and dies, his executor shall have "Scire Facias" on the judgment, and not the heir, for by the recovery it becomes a chattel vested. (c)

A "Scire Facias" may be sued out, either by or against the executor of an executor who has proved the will, for *he* is the executor of the first testator; but an administrator of an executor, or an executor of an administrator, or administrator of administrator, do not represent the first testator or intestate; therefore, a "Scire Facias" cannot be sued out by or against either of them to revive the judgment; but, in that case, there must be taken out "administration de bonis non." (d)

If judgment be recovered *against* an executor who dies intestate, a "Scire Facias" will lie *against* the "administrator de bonis non" of the testator; and where judgment after a verdict is had *by* an executor who dies intestate, the administrator "de bonis non" may sue out a "Scire Facias" on such judgment, (c) or perfect an execution already begun." (f)

So, where an administrator, having recovered a judgment after verdict, dies, the administrator "de

(c) Roll. Abr. 889.

(e) 17 Car. 2. c. 8. s. 2.

(d) 2 Wms. Saunders, 72. o.

(f) 1 Salk. 323.

bonis non" may sue a "Scire Facias" on such judgment, or perfect execution already begun. (g)

If an administrator "*durante minore ætate*" recovers a judgment, and then his time determines, the executor must bring "Scire Facias" on that judgment; (h) so, if A be executor, on condition that if he does such an act, his executorship shall cease, and B become executor, and A having obtained a judgment, does the act, B must bring "Scire Facias" for execution. (i) So, if an administrator obtains a judgment, and then his letters of administration are repealed, the administrator "*de bonis non*" must bring "Scire Facias" for execution. (k)

But if an executor brings a "Scire Facias" on a judgment or recognizance, and has judgment "*quod habeat executionem*," and dies intestate, the administrator "*de bonis non*" must bring another "Scire Facias" on the original judgment. (l)

Where *judgment* is had against one who dies before execution, it seems that a "Scire Facias" will not lie against his heir and terretenants, *until* "*nihil*" is returned to a "Scire Facias" against his personal representatives: (m) But when "*nihil*" is returned, the plaintiff may have a "Scire Faci-

(g) 17 Car. 2. c. 8. s. 2.

(h) Roll. Abr. 868.

(i) Ed. 889.

(k) Yelv. 83. 2 Wms. Saunders, 148, 9.

(l) 2 Lord Raymd. 1049.

(m) Carth. 107. and yet, though the obligee may sue either heir or executor, the heir cannot plead in an action

as," either against the heir alone, (*n*) or jointly with *all* (*o*) the tenants of the lands, whereof the defendant was seised at the time of judgment, or after; (*p*) but, it appears, that the terretenants alone, are not to be charged on judgment or recognizance, until the heir be summoned, or it be returned that there is no heir, or that the heir has not any lands to be charged; for he may have a release to plead, or other matter to bar the execution. (*q*)

On a *recognizance*, a "Scire Facias" may be had against the *executor*, *heir*, and all the terretenants of the conusor, *jointly*; (*r*) or against ex-

against him on the bond of his ancestor, that there is an executor, and that he has assets.

(*n*) 3 Rep. 12. Dy. 271. 3 Bulstr. 317. Bro. Abr. Executions, 28.

(*o*) 2 Wms. Saunders, 9. n. 10. 3 Rep. 13. 2 Salk. 598. Cro. Eliz. 896. Cro. Car. 295.

(*p*) On a judgment obtained against a person living, *half* only of his lands can be taken in execution; (by writ of "Elegit."). On a judgment obtained against the ancestor, and revived by "Scire Facias" against the heir, *half* only of the lands descended can be taken: But on a judgment obtained against the heir on the bond of his ancestor, the *whole* of the

lands which the heir has by descent, may be extended.—

Quod nota. (See the reasons, ante, pp. 26. 28.) 3 Rep. 12. Dy. 271. 373. b. Plow. 441.

(*q*) Bac. Abr. 6. 114. This "Scire Facias" should be against the terretenants, generally, without naming them; for if the plaintiff undertakes to name them, he must name *all*; and if he omit any, they who *are* named may plead in abatement. Comb. 282.

(*r*) 3 Rep. 11. Bro. Abt. execution, pl. 21. Broke adds a "*quod nota*." If a judgment is not to be affected in the same manner, *quære*, whether any solid reason exists for the difference?

cutor and heir jointly: But the executor must, it seems, in *this* case, either be *joined*, or have "*nihil*" returned against him, before the heir and terretenants can be proceeded against; and in every case where the terretenants are charged, they must be *all* joined. Where the defendant or conusor have aliened part of their lands since judgment entered or recognizance taken—though *they* may be charged without the terretenants, the terretenants cannot be charged without *them*; nor, as it seems, till they (the terretenants) have been warned in a "Scire Facias."

We may observe here, that at common-law, where a "Scire Facias" is sued out against the heir, on judgment against his ancestor, for debt or damages, execution cannot be had during the minority of the heir, or the minority of one of many coparceners; but the parol must demur 'till they come of age. *(s)* So, in a "Scire Facias" against the heir, on his ancestor's recognizance; and execution could not be had against the heir during his minority, even on a statute-merchant, staple, or recognizance in the nature of a statute-staple, entered into by the ancestor. *(t)*

Yet, in Chancery, a sequestration may issue against the lands in all these cases. *(u)*

Before the statute of 17 Car. 2. c. 8., the death

(s) 1 Roll. Abr. 140. Co. Litt. 290.

Litt. 290. a.

(u) 2 Chan. Ca. 163, 4.

(t) Bro. Stat. Mer. 33. Co.

of a *sole* plaintiff or defendant, at *any* time *before* final judgment would have abated the suit: but, under that statute, if either party die between *verdict* and judgment, the judgment is entered for him, (within two terms after verdict,) as though he were alive; (x) but a "Scire Facias" must be had before proceeding to execution. (y)

By the 8 and 9 Will. 3. c. 11. s. 6., if in any court of record, plaintiff or defendant die *after interlocutory*, and before final judgment, their personal representatives, if the action might originally have been maintained by, or against them, shall have a "Scire Facias" before proceeding to execution, (z) or final judgment.

The judgment upon this statute is not entered for or against the party *himself*, as upon the 17 Car. 2., but for or against his executors or administrators: (a) therefore, when *defendant* dies after interlocutory, and before final judgment, two writs

(x) 1 Salk. 42.

(y) Such "Scire Facias" should be general, pursuing the form of the judgment; (2 Lord Raymd. 1280.)—that is, the "Scire Facias" must be in the usual form, as when brought by or against the personal representative of a person for or against whom judgment *has* been obtained.

(z) Where either party dies after interlocutory judgment,

and before writ of enquiry, the "Scire Facias," upon this statute, must be for defendant, his executors or administrators, to shew why damages should not be *assessed*.

Where the death happens *after* writ of enquiry, and before final judgment, to shew why damages should not be *adjudged*. (Lil. Ent. 647. 6 Mod. 144. 1 Wils. 243.

(a) 1 Salk. 42.

of "Scire Facias" must be sued out by plaintiff before he can have execution:—one, before final judgment is signed, to make the executors or administrators parties to the record; the other, after final judgment is signed, in order to give them an opportunity of pleading no assets, or any other matter, in their defence:—for it would be unreasonable that the executors or administrators should be in a worse situation, where their testator or intestate died before final judgment was signed, than they would have been if he had died afterwards. (b)

A few cautionary observations may be added under this section.

If, on a judgment against A. execution be *sued out*, but before it is levied, A. dies, there needs no "Scire Facias" to renew this judgment, but execution may be perfected forthwith by his personal representatives. (c)

The writ of "Scire Facias," we may have remarked, is to be sued (when requisite at all) *before* execution; in order to prevent any surprize: here, execution *had* been commenced; and, as the party against whom it was directed could not have made any defence to the writ of execution once sued out, there is no reason that his representative should be in a better condition.

Judgment is entered in the vacation against a defendant who died in the preceding term. Exe-

(b) 2 Tidd's Prac. 1070.

(c) 6 Bac. Abr. 112. Sci. Fa.

cution, tested on a day of the term, prior to defendant's death, may be sued (after judgment signed) (*d*) without "Scire Facias:" (*e*)—For, as judgment signed in any part of term, or the following vacation, relates to; and is considered as a judgment of the first day of term; (*f*) and as execution relates to the judgment, the execution here, (supported, as to its merits, by the previous signature of judgment,) may, in point of form, be considered, from its teste, as having commenced before the defendant's death.

Where there are two or more plaintiffs or defendants, and one or more of them dies *before* judgment, his death is suggested on the record; (under 8 and 9 W. 3. c. 11. s. 7.) and, as no new party is to be charged or benefited, a "Scire Facias" is not requisite in order to execution by or against the survivors. And, it is now clear, that where one or more of two or more plaintiffs or defendants, in a personal action, die *after* judgment, execution, by "Fi. Fa." or "Ca. Sa.," may be had for or against the survivors, without a "Sci. Fa.;" but the execution must agree with the judgment, and be sued out in the joint *names* of all the parties; otherwise it would not be warranted by the judgment. (*g*)

(*d*) 2 Show. 494. pl. 460.

(*e*) 7 Term. Rep. 20. 6 T. R. 368. 2 Burr. 956.

(*f*) Except where merits would be affected by such relation. As with regard to

purchasers of land, who are not bound by a judgment, unless actually docketted on a day prior to their purchase.

(*g*) 1 Lord Raym. 244, 1 Salk. 319. Carth. 404.

Subject to this latter precaution, the plaintiff may always, in personal actions, have execution singly, by "Fi. Fa." or "Ca. Sa.," against any one of several joint defendants, during their lives; (*h*) and the party on whom singly, execution is so levied, may, in actions of contract, indemnify himself by exacting contribution (*i*) from his co-defendants: (*k*) there is, therefore, no reason why a plaintiff should not have execution singly against one of the survivors; and, as no new party is to be charged or benefited, a writ of "Sci. Fa." is unnecessary.

But if the plaintiff, considering the survivor inadequate to the discharge of the judgment, wishes to come on the survivor, *and* the lands of the deceased, jointly; a new person becomes chargeable; and a "Sci. Fa." must be sued out against the survivor *and* the heir and terretenants of the deceased,

(*h*) If two persons acknowledge a recognizance jointly and severally, the conusee may have several execution; or, (when it is requisite to sue "Sci. Fa.") several writs of "Sci. Fa." against the conusor; or have several execution on a joint writ. 2 Inst. 395. 1 Lev. 225.

(*i*) 8 T. R. 186. 5 T. R. 556. 2 Bos. and Pull. 268.

(*k*) In actions of the nature of *Tort*, every defendant is

liable for the whole damages. If, therefore, the sheriff, as he may do, levies by "Fi. Fa." sued out in the joint names of many defendants, the whole damages from the first defendant he finds; that defendant cannot compel a contribution from his co-defendants. But the plaintiff cannot levy his damages more than once; and when they are fully levied on one defendant, the rest are discharged. See post.

to shew why the plaintiff should not have execution against the goods and chattels, and moiety of the lands of the survivor, and against the moiety of the lands of the deceased. (1)

So, it seems, if the survivor be charged jointly with the *executor* of the deceased, a "Sci. Fa." against both becomes necessary.

I. B.—*Marriage.*

Now come we to the cases where, by reason of marriage, some new party is to be charged or benefited by the execution.

If a feme sole obtain judgment, or if judgment be recovered against her, and she marry before execution, a "Sci. Fa." must be brought by or against husband and wife, in order to execute judgment; (m) except in the case of a "Ca. Sa." against the feme. See post.

If husband and wife obtain judgment for a debt due to the wife before marriage, and the wife die before execution, the husband alone, may have a "Sci. Fa." (without taking out administration), or, it seems, may sue out execution in the *names* of

(1) Carth. 107.

(m) Forms in Thes. brev. 256, 265; Clift. 681. Thes. brev. 247, 251. Tidd's Prac. forms, 439. It is not necessary to lay a

venue where the marriage was solemnized, it being matter of surmise to which no venue is necessary. 2 Str. 775.

himself and wife, *without a "Sci. Fa.,"* (n) for the property in the debt is altered by the judgment, and becomes vested in the husband; or, at least, jointly in him and his wife; who, dying after judgment, the case becomes analogous to those where one of two persons in whose favor judgment has been jointly given, dies before execution; which is, nevertheless, sued out by the survivor without further proceedings, and (that it may be warranted by the judgment) in the joint *names* of survivor and deceased. (o)

It is said, that if judgment be recovered by a feme sole, and she marry, and then the husband and wife sue out a "Sci. Fa." upon the judgment, *and have an award of execution*, and afterwards, before execution, the wife die, the husband alone may have a further "Sci. Fa." to execute the judgment. (p) But, *quære*, whether, on the principle of the foregoing case, this *second* "Sci. Fa." be necessary? for though here the original judgment was obtained *before* marriage; yet, by the judgment and *award of execution* in the first "Sci. Fa." *after* marriage, the property in the debt seems as much altered, and as thoroughly vested in the husband, as in the foregoing case; and after the judgment in the first "Sci. Fa." there is no *new* person to be charged or benefited by the execution.

(n) Cro. Eliz. 844. 1 Mod.
179. Cro. Car. 208. 3 Mod. 189.
6 Bac. Abr. 116. "Sci. Fa."

(o) See ante, p. 136.
(p) 1 Saik. 116.

It is also said, that if a "Sci. Fa." is brought against husband and wife, upon a judgment recovered against her when sole, and *execution is awarded thereon against both*; and afterwards, before execution, the wife dies, a further "Sci. Fa." may be sued out against the husband, to have execution against him.^(q) But quære, whether, on the foregoing principle, this second "Sci. Fa." be necessary; for though the original judgment here, and the charge thereon, attached to the feme while sole; yet, by the judgment in "Sci. Fa." *after marriage, and execution thereon awarded*, the liability was absolutely fixed on the husband jointly with his wife; no *new* person was to be charged or benefited by execution after judgment in the first "Sci. Fa.;" and the case seems analogous to those, where one of two defendants dying after a joint judgment against both, execution issues, without further proceedings against the survivor; and, (that it may agree with the judgment,) in the joint *names* of survivor and deceased.^(r)

If husband and wife recover judgment for a debt due to the wife *as executrix*, and the wife die before execution, "Sci. Fa." shall be had, on the judgment, not by the husband, (*quâ husband*), but by the succeeding executor or administrator, "*de bonis non*."^(s)

(q) 3 Mod. 186.

(r) Ante, p. 136.

(s) Cro. Car. 227. Sir W. Jones, 248.

If a verdict be found on a plea of coverture, for the wife, who has been sued as a feme sole, it is irregular to sue out execution for the costs, in the name of *husband* and wife, without a "Sci. Fa.;" but the wife alone may take out execution in her own name, because the plaintiff having declared against her as sole, is concluded from denying it. (t)

The following cautionary observations may be added here :

If husband and wife recover lands and damages, and the husband die, the wife may have execution of the land *and* damages (u) without a "Sci. Fa." No new person is charged or benefited.

A plaintiff having obtained judgment against a feme sole, who marries before execution, may, after marriage, take her in execution by "Ca. Sa." without first suing out a "Sci. Fa.;" (x) for by this mode of execution, no new person is charged,

1. C.—*Bankruptcy.*

In cases of bankruptcy a "Sci. Fa." is necessary before proceeding to execution, inasmuch as a new party, (the assignees,) are benefited by the execution, and ought to shew that they have due authority to assume that benefit.

Whenever, therefore, a party becomes bank-

(t) Doug. 637.

(x) 4 East, 521.

(u) See ante.

rupt at any period of a suit before final judgment, the assignees may proceed to final judgment in *his* name, and then sue out a "Sci. Fa." to have execution in their own name. (y)

If a party recover final judgment, upon which defendant brings a writ of error, pending which, plaintiff becomes a bankrupt, his assignees ought to proceed by the usual methods to affirmance of judgment in the bankrupt's name, and then sue out a "Sci. Fa." on the judgment, in their own names to have execution. (z)

However, where the plaintiff became a bankrupt between interlocutory (a) and final judgment, and took out execution in his own name, though, regularly, the assignees ought to have brought a "Sci. Fa." on the final judgment, and have sued out execution in their own name; yet the court refused to interfere *summarily on motion*, to set aside the proceedings. (b)

2. A.—*Execution contingent after judgment, on future breaches of covenant.*

The second division of this chapter will comprise

(y) 2 Wils. 372. 1 T. R. 463. 2 T. R. 45. 3 T. R. 437. came bankrupt within the true intent and meaning of the statutes etc. and that his goods and effects were afterwards, in due manner, assigned to the plaintiffs. 2 T. R. 45. See form of the writ, Tidd's Prac. forms 440.

(z) 1 T. R. 463. 2 T. R. 45. 3 T. R. 437.

(a) 3 T. R. 437.

(b) It is sufficient if the "Sci. Fa." by assignees, states generally, that the party be-

those cases where execution is contingent after judgment, or obligation thereto equivalent, on the existence of certain circumstances to be first proved by the party charging.

Where judgment is entered in an action of debt on bond, or on any penal sum, for the non-performance of covenants or agreements in any indenture, deed or writing contained; such judgment remains (under 8 and 9 W. 3. c. 11. s. 8.) as a security to answer such damages as may be sustained by any further breach of covenant in the same indenture, deed or writing contained. In these cases, the further execution on such judgments, is contingent, after judgment, on the existence of further breaches of covenant; which, in order to prevent surprize, must be suggested by the plaintiff before proceeding to further execution, in a writ of "Sci. Fa." on the judgment, against the defendant, or against his heir, tenants, executors or administrators, to summon him or them respectively to shew cause why execution should not be had on the said judgment. (c)

(c) Upon this "Sci. Fa." the proceedings are the same "as in the action upon the said bond or obligation, for assessing damages upon trial of issues joined upon such breaches, or enquiry thereof, upon a writ to be awarded in manner as therein directed; and, upon payment or satisfaction of such

future damages, costs, and charges, all further proceedings upon the said judgment are again to be stayed, and so, toties quoties; and the defendant, his body, lands, or goods shall be discharged out of execution." 8 and 9 W. 3. c. 11. s. 8.

It seems now settled, that a bond conditioned for the payment of an annuity, or of money by instalments, is within the statute 8 and 9 W. 3. c. 11. s. 8. and it is necessary to sue out a "Sci. Fa." under that statute, before proceeding to execution for arrears or instalments accruing subsequently to judgment. (d)

Here we must observe, that if a sum be made payable by a *recognizance*, at three or more several days, the conusee, after the first day of payment is elapsed, may have execution for the sum then due, immediately, and for the other sums as they respectively become due, without a "Sci. Fa.," as it seems;—because such recognizance is in the nature of three several judgments. (e)

It is said to have been adjudged, that in covenants perpetual, as to repair, &c.; if they be once broken, and a recovery had in an action of covenant, the plaintiff shall have a "Sci. Fa." upon the judgment in case of future breaches, and need not bring a new writ of covenant. (f)

2. B.—On future Effects of Bankrupt.

The future *effects* only, of a person who, having been twice bankrupt, has paid less than 15s. in the pound on his second commission, are liable (under the 5th Geo. 2. c. 30. s. 9.) to the claims of his cre-

(d) 6 East, 550.

(e) Co. Litt. 292. b.

(f) Cro. Eliz. 3. but see 3

Leon. 51.

ditors; with the exception of his tools of trade, necessary household goods, &c. &c. (g)

Execution then, on a judgment obtained against such bankrupt, is contingent, after judgment, on the circumstance of his having omitted to pay 15s. in the pound under his second commission, on his acquisition of new effects since his certificate, and on the observance by the plaintiff of the exceptions allowed by statute:—the plaintiff, therefore, before he can proceed to execution on such a judgment, must, for the prevention of surprise, sue out a “Sci. Fa.” suggesting the above circumstances, stating that the defendant has become seised or possessed of some estate or effects, and warning him to shew why the plaintiff should not have execution of the debt or damages, to be levied of the estate or effects whereof the defendant has become seised or possessed since the obtaining his certificate under the last commission, except his tools, &c. &c.

The object too, of the judgment in this case, being changed, (that is, the judgment *before* certificate, being against the bankrupt’s *person and* effects, generally, *without* exception, and therefore not warranting by its terms a special execution

(g) Although a prior commission has been superseded by consent, yet a second bankruptcy does not protect future effects unless 15s. in the pound are paid under the second com- mission. Doug. 46. and though it is probable that 15s. *will* ultimately be paid, yet in the mean time future effects are liable. Tidd’s Prac. 1060. 1 Bos. & Pul. 467.

with certain exceptions, against his effects *only*, acquired after certificate) such execution under such a judgment, could not be regular unless the defendant were first warned that the operation of the judgment *was* so changed, and that the plaintiff was duly authorized in his new proceeding.

The execution, therefore, is in a further degree contingent after judgment, on the plaintiff's shewing, as within, that he is duly authorized in so changing the operation and object of the judgment.

We must observe, that where judgment has been recovered against such bankrupt, *after* certificate, and the bankrupt has himself had an opportunity of pleading the statute in discharge of his person, tools, &c. the judgment is itself special against his effects (with the exception of tools, &c.) acquired after certificate; the plea has prevented any surprise, and the execution, following the judgment, may be sued out *without* a "Sci. Fa." on any effects which the defendant has acquired since his certificate, except his tools, &c. (*h*) But if in this case, the defendant has acquired no property, and the plaintiff takes a judgment against his future effects, "*quando acciderint*," the plaintiff, it might at first seem, on the foregoing principles, ought not to harass the defendant by a future execution on this

(*h*) Where defendant having opportunity to plead the statute, neglects to do so, he must suffer for his own laches, and will not be relieved on a general execution pursuing a general judgment.

judgment, until he had suggested in a "Sci. Fa." that further effects had come to hand beyond tools, &c.—However, the special judgment, guarding the defendant's person and tools, &c. and the execution strictly following the judgment, there *can* be no surprize in this case; and whatever else comes to the defendant as his own, at any time, is fairly the object of execution till judgment be satisfied. And so note the difference between judgment after certificate, against the future effects of such a bankrupt, and judgment against an executor or administrator, for assets "*quando acciderint.*" For if the plaintiff, under the latter judgment, were to proceed to execution on alleged future assets, without first suggesting in a "Sci. Fa." that they *had* come to hand, he might by surprize take the goods of executor or administrator, instead of those of testator or intestate.

2. C.—*On future effects of discharged Insolvents.*

The future *effects* only, of a person discharged under an insolvent's act, being liable to execution, with the exception of his tools, necessary wearing apparel, &c. not exceeding 10*l.* in value, a "Sci. Fa." is necessary before proceeding, under a general judgment obtained before the discharge, to special execution after the discharge, against such future effects with such exceptions. The princi-

ple of this is apparent, from what has just been stated with regard to bankrupts.

The reader must here be cautioned, that a "*Sci. Fa.*" is never sued out on a judgment confessed by, virtue of a warrant of attorney. (i) That such a judgment, whether entered up before or after the discharge of insolvent debtor, or before or after the certificate of a bankrupt not paying 15s. in the pound under a second commission, where a *general* warrant has been given by them, must pursue

(i) Per Chambre J. 3 Bos. and Pul. 188. 3 Taunton's Rep. 74. For the principle of *Sci. Fa.* is to prevent surprize, and give warning, where necessary; but a party cannot be said to need warning, where judgment has been entered up against him by his own authority. Sed quære, whether the situation of a party who has given a warrant of attorney to confess judgment, is not so altered by the statutes affecting him on non-payment of 15s. in the pound under a second commission, or on his discharge under an insolvent's act, that he *ought* to have warning, and "*Sci. Fa.*" ought in these two instances to be sued out, even on a judgment confessed by warrant of attorney; to pre-

vent his being surprized out of the defence and exceptions allowed by statute, even against his own judgment by confession, and to save him the expence and trouble of relief by motion or "*auditâ querelâ*," in case the plaintiff infringes on those exceptions. It was urged *arguendo*, and not contradicted, in *Buxton v. Mardin*. 1 T. R. 81. that a discharge under an insolvent's act, countermanded a warrant of attorney, *ideò quære*. If the position laid down in 3 B. and P. 188. be law in all cases, why is it usual in giving warrants of attorney to enter up judgment, to covenant that no advantage shall be taken of the omission of a "*Sci. Fa.*" on such judgment?

that warrant, and be entered up generally; (*k*) That the writ of execution *must* strictly pursue the judgment, (*l*) and be general also; but if certificated bankrupt not having paid 15s. in the pound under second commission, or discharged insolvent, be unjustly aggrieved by such general execution on a judgment confessed by their own warrant, (as for instance by losing their necessary tools, or having their persons subjected to imprisonment) it seems the Court would relieve them on motion. (*m*)

2. D.—On Assets “quando acciderint.”

When the plaintiff, (in an action against an executor or administrator,) admitting the plea of “plenè administravit,” takes judgment of assets, “quando acciderint,” he cannot at any future time proceed to execution on this judgment, without first suing out a “Sci. Fa.” to state that assets *have* come to hand, and to warn the defendant, should he be able to allege any thing against such execution. (*n*)

(*k*) 3 Bos. and Pul. 188. 3 Taunton’s Rep. 74. Fa.” a special execution on a general judgment; but over-

(*l*) 1 T. R. 80. rules that case, as to the pro-

(*m*) 3 Bos. and Pul. 187. priety of suing out a “Sci. Fa.” on a judgment confessed by warrant of attorney.

which confirms the case of Buxton v. Marden, 1 T. R. 80. as to the irregularity of suing out without a previous “Sci. (*n*) Tidd’s Prac. 1063. 1 Wms. Saunders, 336. b. the

2. E.—*Scire Fieri Enquiry.*

In judgment against executors or administrators, execution on their own effects or persons for the debt of testator or intestate, is contingent, after judgment, on their having wasted the effects of testator or intestate. (o)

Where such waste has taken place, the object and operation of the judgment, as to the satisfac-

plaintiff, by taking judgment of assets "*quando*," having *admitted*, that the defendant had none at the time of the judgment, will not be allowed in the "*Sci. Fa.*" to allege that any came to the defendant's hand *before* judgment; and the "*Sci. Fa.*" must expressly state that assets have accrued *since*. 2 Wms. Saund. 219.

(o) The executor is immediately, by the terms of the judgment, (1 Wms. Saunders, 336.) himself liable to execution for *costs*, wherever any plea admitting that he has acted as executor, is found against him, or he suffers judgment by confession or "*nihil dicit*," and the testator's ef-

fects are insufficient to satisfy debt, damages, and costs. But there are two pleas, which, if found to be false, (perhaps because "*splendidus mendaces*," more daringly and perniciously false than any other) render the executor, immediately by the terms of the judgment, himself liable to execution for *debt, damages, and costs*, if the testator's effects in his hands prove insufficient—these pleas are, "*Ne unques executor*," and "*release to himself*." 1 Wms. Saund. 336. 4 T. R. 648. 7 T. R. 359. 1 Wms. Saund. 336. b. Bro. Executors, 34. 1 Roll. Abr. 980. (C.) pl. 2. Co. Ent. 145. b. Cro. Jac. 648.

tion of the *debt* at least, being changed; (from the effects of testator or intestate in the hands of executor or administrator, to the effects or persons of executor or administrator themselves) execution against the effects of the latter, is not warranted by the terms of the judgment, until the plaintiff shews that new circumstances have arisen, which give him sufficient authority for so changing the operation of the judgment.

This execution therefore is contingent after judgment on the existence of such circumstances, and on the plaintiff's shewing that under them he is so authorized; and he formerly could not proceed to it, without first suing out a "*Sci. Fa.*" which (after stating that on a "*devastavit*" suggested in a special writ of "*Fi. Fa.*" on the judgment, an enquiry made by jury had ascertained the existence of waste) warned the defendant to shew why execution for the debt, damages, and costs, should not issue against his own proper goods.

It afterwards became the practice of both Courts, for the sake of expedition, to incorporate the "*Fi. Fa. de bonis testatoris*," enquiry, and "*Sci. Fa.*" into one writ, thence called a "*Scire-fieri-enquiry*." (p)

This writ, reciting the "*Fi. Fa. de bonis testatoris*," sued out on the judgment against the exa-

(p) For the whole history ders, 219.
of this writ, see 1 Wms. Saun-

cutor, the return of “nulla bona,” and then suggesting that the executor had sold and converted the goods of the testator to the value of the debt and damages recovered, commands the sheriff to levy the said debt and damages, of the goods of the testator in the hands of the executor, if they can be levied thereof; but if it should appear to him, by the inquisition of a jury, that the executor has wasted the goods of the testator; then the sheriff is to warn the executor to shew why execution should not issue against his own proper goods, &c.

If the judgment had been either by or against the testator or intestate, the writ recites that fact; and also, that the court had adjudged (upon a writ of “Sci. Fa.” to revive the judgment) that the executor or administrator should have execution for the debt. (q)

This practice is still frequently adopted. But the most usual way of proceeding in such cases, is by action of debt on the judgment, (r) suggesting a “devastavit;” because, in the proceeding by “Scire-fieri-enquiry” the plaintiff is not entitled (under 8 and 9 W. 3. c. 11. s. 3.) to costs, unless the executor appears and pleads.

The reader must here observe, that if to a “Fi.

(q) See the forms, (1 Wms. Saunders, 303.) Clift. ent. 659, 671. Lilly’s ent. 664, 666. 2 Rich. Prac. K. B. 523.

(r) See the practice in this action. 1 Wms. Saunders, 219.

Fa." on a judgment against an executor, the sheriff returns "nulla bona" and a "devastavit" at once, execution may immediately issue against the executor himself, without a "Sci. Fa.;" (s) for the waste being clearly ascertained by the sheriff's return, a warning is unnecessary, as the executor can have no defence.

2. F.—*Conditioned Recognizances.*

A recognizance entered into as a security for the performance of conditions, may be considered in its nature as a judgment conditional; and execution being contingent on the breach of conditions, a sufficient breach must be alleged in a "Sci. Fa." before execution can be sued out on the recognizance; (t) unless the plaintiff prefers proceeding by action of debt on the recognizance.

(s) Tidd's Prac. 1005. A judgment against executor or administrator, whether by default or upon demurrer, 1 Salk: 310. 3 T. R. 686.) or upon a verdict on any plea, except, "plene administravit," or assets "usque ad, et riens ultra," (1 Atk. 292. 3 T. R. 685.) is conclusive upon him, that he has assets to satisfy such judgment. And the "nulla bona" afterwards, seems nearly as conclusive evidence of a "devastavit."

(t) Cro. Jac. 3. 6 Bac. Abr. 108. "Sci. Fa." If a recognizance be acknowledged in Chancery, that is, in the ordinary legal court there, that court may hold a plea of "Sci. Fa." to have execution: But if issue be joined, or there be a demurrer to part and issue on the residue, the chancellor delivers, (by the clerk of the petty big, [1 Eq. Cas. Abr. 129.] the whole record to the court of K. B., but not to any other; and judgment is given

2. G.—*Bail Recognizances.*

Of the same nature are recognizances entered into by bail. If the action is in the Common Pleas, the recognizance is taken on a penalty or sum certain, (being double the amount of the sum sworn to,) and contains a condition, that if the defendant be condemned in the action he shall pay the condemnation money, or render himself a prisoner to the Fleet, or the bail will do it for him. (u) In K. B., by original, the recognizance is similar.

Where the action is by bill, the recognizance of the bail is general; that if the defendant shall be condemned in the action, he shall satisfy the costs and condemnation money, or render himself to the custody of the marshal, or that the bail will do it for him. (x)

If the principal, after judgment against him, does neither pay the condemnation money, nor sur-

there, as well on the demurrer as on the issue; Latch, 3.) and it is not necessary the issue should be tried at bar; it may be tried at "Ni. Pri." Cro. Car. 313.

(u) By a rule in the Common Pleas, the defendant, in that court, is not permitted to enter into the recognizance at all; but each of the bail must enter in double the sum sworn

to. (1 Bos. and Pul. 530.)

The court will not permit the plaintiff to levy out of the penalty of the recognizance equitable costs, which he has really been put to, but which were not included in the judgment. (2 Str. 826.)

(x) Cro. Jac. 645. Cro. Car. 482. 2 Salk. 564.

render himself to prison, and a "Ca. Sa." taken out against him, ^(y) is returned "non inventus," (for the bail are not bound to render the principal until they know by the plaintiff's suing out the writ of "Ca. Sa.," that he really means to proceed against defendant. ^(z)) A "Sci. Fa.," shewing

^(y) Sir W. Jones, 29. Cro. Car. 481. 1 Ld. Raymd. 156.

^(z) No attempt is in truth ever made to find out the principal, in order to arrest him on the "Ca. Sa.;" but it is left at the sheriff's office merely to give the bail notice that the plaintiff means to proceed against the defendant's person; and, therefore, it is the duty of the bail to search in the sheriff's office to know whether any "Ca. Sa." is left there. (3 Burr. 1360.) But if the "Ca. Sa." be regularly sued out and returned, it may be filed at any time. (1 Lev. 225.) So that if the principal dies after the return of the "Ca. Sa." but before it is filed, the bail are fixed. (6 T. R. 284.) So, where the principal dies after the return of the "Ca. Sa." and before the suing out a writ of "Sci. Fa.," the writ may be sued out afterwards. (1 Str. 511. 2 Str. 717.)

The bail are liable, though the plaintiff takes a "cognovit" from the principal, without giving them any notice. (5 T. R. 277.) But if the plaintiff declares for a different cause of action from that mentioned in the writ (2 H. Bl. 278.) or from that mentioned in the affidavit to hold to bail, (6 T. R. 363. 7 T. R. 80.) or where in K. B. the plaintiff sues by *original* writ in one county, and declares in another, (3 Lev. 235.) the bail are discharged. So, where the cause is referred to arbitration, unless a verdict be taken for the plaintiff. (1 Sel. 467. 1 Lee's P. Dic. 62.)

The "Ca. Sa." against the principal should be directed to the sheriff of the county where the action was laid; and where the proceedings are by bill, there must be eight days, where by original fifteen, between the teste and return of the writ, (2 Salk. 602.) and it

these circumstances, must be sued out before the plaintiff can proceed to execution against the bail, (a) unless he chooses to proceed by action of debt on their recognizance. (b)

must lie four days exclusive in the sheriff's office, and be made returnable like the prior proceedings, on day certain, or general return.

(a) This "Sci. Fa." may be sued out on the return-day, or by original, on the "quarto die post" of the return-day of the "Ca. Sa." (8 T. R. 628.) In declaring in "Sci. Fa." on a bail recognizance taken in an action by *original*, there is no incongruity in saying, "then lately commenced and depending in K. B." (14 East, 539.)

(b) The plaintiff may bring one action or several against the persons bound in the recognizance, but one "Sci. Fa." is sufficient; for the recognizance on which the "Sci. Fa." is grounded, being joint and several, the execution may be several, though the "Sci. Fa." is joint. (1 Lev. 225.) Before the "Sci. Fa." is sued out, or an action commenced on the recognizance, against the bail,

the bail-piece ought to be filed, and an entry made of the recognizance on a roll, which should be docketed; otherwise the bail may plead "nul tiel record." However, if the entry be not made 'till after plea, they may withdraw their plea, and plaintiff shall pay the costs of it.

Note, if a "Sci. Fa." be brought against two only, upon a recognizance acknowledged by them jointly and severally with the principal, it is bad on demurrer, and the writ shall abate, because, being founded on a record, the cause of the variance ought to be shewn; as, that the principal is dead. But in an action against two, on a joint and several bond by three, the defendant ought to plead in abatement, for the court will not intend, that the bond was sealed and delivered by all those named in it. (All. 21. 2 Wms. Saund. 72. b. c.)

2. H.—*Bail in Error.*

As to the recognizance by bail on a writ of error, the plaintiff in the writ of error, must (under 3 Jac. 1. c. 8.) be bound with two sufficient sureties (to the person for whom the judgment is given,) by recognizance, in double the sum adjudged to be recovered by the former judgment, to prosecute the writ of error with effect; and also to satisfy and pay, if the judgment be affirmed, all and singular the debts, damages and costs adjudged upon the former judgment, and all costs and damages to be awarded for delay of execution.

Execution, therefore, on this recognizance, is contingent on the former judgment being affirmed, or on the plaintiff's not prosecuting the writ of error, and its being in consequence non-prossed or discontinued; and the plaintiff, before he can proceed to execution in such event, must shew in a writ of "Sci. Fa.," that the contingency *has* been decided. But he may here also, at his election, bring an action of debt on the recognizance. (c)

(c) It is in general more advisable to proceed against bail, by action of debt on the recognizance, than by "Sci. Fa." no costs being allowed in the latter, unless the bail appear and plead, or join in demurrer. (8 and 9 W. 3. c. 11. s. 3.) In the action of debt too, plaintiff may recover damages for

the detention of the debt, which he cannot do in "Sci. Fa." But as a copy of the process must be *served*, in debt, the plaintiff must proceed by "Sci. Fa." if the bail be out of the way, or he do not mean to give them notice. (Tidd. 1045.)

And as a render does not, in this case, excuse the bail, there is no necessity to sue out a "Ca. Sa." against the principal, in order to proceed against the bail by either method. (d)

It may be observed here, that in the King's Bench, as the parties in error have no day in court given to either of them, on the removal of the record by writ of error, the defendant in error has no other means of compelling the plaintiff to assign his errors, than by suing out a writ of "Sci. Fa. quare executionem non." (e)

This "Sci. Fa. is considered merely as a means of compelling an assignment of errors ; and it seems

(d) The "Sci. Fa." against bail in error must be brought in the court where the recognizance was taken ; unless it was taken in the Common Pleas, and then the "Sci. Fa." may be brought either there, or in the K. B. to which the record is removed, "a certiorari" lying to remove the recognizance after the judgment is affirmed. (1 Show. 343. 4 Mod. 104. see form, Lil. Ent. 643.) This writ of "Sci. Fa." is made out by the clerk of the errors ; and on a recognizance taken in the K. B. the writ recites, not only the recognizance, but the condition of it, and the affirmance of the judg-

ment. (Tidd's Prac. forms, 400.) But on a recognizance taken in C. P., only the recognizance, and non-payment of the sum acknowledged to be due ; (id. 399.) for in that court the condition is not incorporated, but subscribed by way of defeazance. (Barnes, 93.) Besides which, if the condition were stated, it would also be necessary to state the affirmance of the judgment, which might occasion a difficulty if the bail were to plead "nul. tiel record" of the judgment of affirmance, which remains in the K. B. (2 Wms. Saund. 72. d.)

(e) Godb. 68. 2 Leon. 107.

to be the practice now to admit of no plea thereto. (*f*) If errors are assigned before the expiration of the rule to appear to the "Sci. Fa.," (*g*) all further

(*f*) Tidd, 1133.

(*g*) This "Sci. Fa." may issue immediately after the record is certified, though before the rule for certifying it is expired; (2 T. R. 17.) and should be directed to the sheriff of the county in which the action is laid. If the transcript be brought in by the *essoin* day of the term, the "Sci. Fa." may bear teste on the last day of the preceding term; if brought within the term, on the first day of that term. (Tidd, 1132.) If there be only one writ there should be 15 days between the teste and return, by *original*; or, if there be two writs between the teste of the first and return of the second. (Ibid.) In the latter case, the "alias" cannot issue before the return of the former writ; and ought to be tested, by original, on the "quarto die post" of the return of that writ; or by bill, on the very return day. (2 Salk. 699. Tidd, 1132.) If the proceedings are by original, the return ought to be

on a general return day: if by bill, on a day certain. (2 Leon. 107. 3 Salk. 320.) A "Sci. Fa." in error, need not lie four days in office, as a "Sci. Fa." against bail. (3 Burr. 1723. 4 Burr. 2439.) On the return day of the "Sci. Fa.," if "Sci. Feci" be returned, or of the "alias," if there be two "nihilis," by bill, or on the "quarto die post" of the return, if by original, (13 East, 391.) the defendant in error must give a rule to appear, with the clerk of the rules, which expires in four days exclusive. (Tidd, 1133.)

Where a "Sci. Fa." was prayed by *one* of *several* defendants in error, the fault was holden to be cured by the plaintiff in error assigning his errors. (3 Burr. 1791.)

Bankruptcy does not abate a writ of error, and the assignees must sue out this "Sci. Fa." in the bankrupt's name, and proceed in his name to affirmance of judgment. (1 T. R. 463.)

proceedings upon it, are stayed of course ; but if the plaintiff do not assign his errors, and give a copy of them to the defendant's attorney in error, before the time allowed by the rule on the "Sci. Fa." is expired, the attorney for the defendant in error may sue out execution in this "Sci. Fa." on the former judgment. (This execution, we may perceive, is contingent after the former judgment, on the non-assignment of errors by the plaintiff in error ; and the judgment entered up on the "Sci. Fa." is sufficient evidence of such non-assignment.) But the writ of error still remains in force ; and defendant in error can have no costs unless he gives a rule for the plaintiff to assign errors. (*h*)

It seems, that if the *judgment* of an inferior court be removed into K. B. by a writ of false judgment, and the plaintiff on that writ is non-prossed, a "Sci. Fa." is necessary before proceeding to execution, to point out the limits of the inferior jurisdiction, and pray execution within them. (*i*)

3.—*Lapse of Time.*

Subject to the rules laid down in the two preceding divisions of this chapter, as to the necessity of suing out a "Sci. Fa." where any new

(*h*) Tidd, 1134.

318. 320.

(*i*) Bro. Brev. jud. 206.

party is to be charged or benefited by the execution, or execution is contingent after judgment; we must now consider how this proceeding is affected by the incident of time.

As it has been before stated, at the commencement of this chapter, wherever execution has been delayed (that delay not arising from the party chargeable) more than a year and a day, from the day of signing *(k)* judgment, or the time of payment fixed in a recognizance, *(l)* execution cannot be had without first suing out a "Sci. Fa."

If the judgment be above seven years old, the "Sci. Fa." cannot be had without a side-bar rule; *(m)* if it be above ten years old, but under twenty, there must be a motion under counsel's hand, supported by affidavit, that the judgment is unsatisfied; if the judgment be above twenty years, standing, there must be a rule to shew cause, under a similar affidavit. *(n)*

It must here be observed, that if a "Ca. Sa." "Fi. Fa." or "Elegit" is taken out within the year after judgment, and not executed, a new writ of execution, of the same, or a different species, may be sued out at any time afterwards, without a "Sci. Fa." provided the first writ be returned and filed, *(o)* and continuances entered from the time of issuing it; *(p)*

(k) Barnes, 197. Co. Litt.
505.

(l) 2 Inst. 471.

(m) 2 Salk. 598.

(n) 2 Wms. Saund. 72. f.

(o) 2 Wills. 82.

(p) 1 Str. 100.

and the continuances may be entered after the issuing of the second writ, (*q*) unless a rule be made on motion for the proceedings to remain in statu quo. (*r*)

However, this after-entry of the continuances is questionable, and in practice it is the constant course to shew that the previous writ has been returned.

In the case of the king there needs no "Sci. Fa." after the year. (*s*)

Execution sued out after the year and day, without "Sci. Fa." is not void, but voidable only, by writ of error. (*t*)

Where a writ of error is brought on a judgment, the delay of execution arises from the party chargeable, and in that case execution may be had, after judgment affirmed, without a "Sci. Fa." although more than a year may have elapsed since judgment originally signed. (*u*)

And if the year after judgment had expired *before* the writ of error was sued out, and the judgment is affirmed, or plaintiff in error nonsuited, or the writ of error discontinued, the plain-

(*q*) Carth. 283. Cleft. 874. 883.

(*r*) 2 Wms. Saund. 72. f. 68. c.

(*s*) 2 Salk. 603.

(*t*) 3 Lev. 404. 1 Salk. 261. and in judgments confessed by warrant of attorney, it is very

usual to covenant that no advantage shall be taken, although execution be sued out without a Sci. Fa. where that writ might be requisite.

(*u*) 5 Rep. 88. Cro. Eliz. 416. Carth. 237. 1 Salk. 322. Lane, 20.

tiff may sue out execution without a "Sci. Fa." for the writ of error revived the judgment. (x)

If the plaintiff has judgment with a "cesset executio" for any given time, he may, within a year and day after the expiration of the time allowed by the "cesset executio," take out execution without a "Sci. Fa." for the delay is by consent of parties, and in favour of defendant. (y)

After many decisions to the contrary, it has at length been adjudged, accordantly with the principles here developed, that if the plaintiff has been prevented suing out execution within the year, by the defendant's obtaining an injunction out of Chancery, he may sue out execution afterwards without a "Sci. Fa." (z)

It is now settled also, that "Sci. Fa." lies on a judgment in ejectment. (a)

The various pleas to writs of "Scire Facias" may be found in 2 Wms. Saund. 72. t. u. v. defendant cannot plead any matter to "Sci. Fa." on a judgment, which could have been pleaded in the original action.

(x) Cro. Jac. 364. 1 Roll. Abr. 899. (N) pl. 3. 4. 5. 1 Show. 402.

(y) 1 Salk. 322.

(z) 2 Burr. 660. nor is it necessary upon an outlawry after judgment, to revive the judgment by "Sci. Fa." after

the year and day. Cro. Eliz. 706. Gilb. C. P. 71. that is, for lapse of time. A death of either of the parties would effect the judgment as usual. Barnes, 325.

(a) 2 Salk. 600.

CHAPTER III.

1. In what cases certain writs must exclusively be adopted.
2. In what cases, by an election of one writ, or mode of treating one party to execution, recourse to any other, or a second recourse to the same, is precluded.
3. The method of proceeding in execution, where there are joint defendants and a joint judgment.
4. Where, subject to the preceding rules, the party proceeding to execution may have a "Ca. Sa." "Elegit," or "Fi. Fa." at his election, and out of what court he must sue such execution.
5. Of charging in execution one already a prisoner.
6. In what cases leave of the court must be had before execution.

1.—**ON** the forfeiture of a statute-merchant, statute-staple, or recognizance in the nature of a statute-staple, the creditor was first obliged to bring his obligation to the mayor, or person before whom it was taken, whose duty it then became incontinently to cause the goods of the debtor, to the amount of the debt, to be sold; or, if there were no buyers, to be delivered to the creditor by the appraisement of honest men: and the mayor, &c. might cause the body of the debtor, if lay, to be committed to prison till he agreed the debt.

But if the conusor could not be found within the staple, nor his goods to the value of the debt, and the mayor had certified those facts into Chancery

under his seal, (a) an "Extent" against the body, land, and goods, to be taken all at once, or consecutively, (b) as might be found most expedient, was the execution given by statute, in one writ, to conusees of a statute-staple, or recognizance in the nature of a statute-staple, only.

After the mayor's certificate in the case of a statute-merchant, the first process was a "*Capias ad Satisfaciendum si laicus*," returnable in the King's Bench or Common Pleas, (on the statute-staple a "*Capias*" was returnable in Chancery only) (c) to which, if the sheriff returned that the party was dead; or not found in his bailiwick, another writ, returnable also in either Bench, issued, to extend the lands and goods; which the sheriff might deliver without the delay or charge of a "*Liberate*;" but if the party were alive, and taken, he was imprisoned for half a year, (unless he agreed the debt or sold his lands for the discharge of it,) before the sheriff could deliver his lands or goods to the conusee: (d) and after such delivery, his body might be detained 'till the debt was satisfied.

If the conusor of statute-merchant, staple, or recognizance in the nature of statute-staple, were a

(a) Wms. Saund. 70. b. Dalt. Sh. 123.

(b) Hob. 60. 2 Rol. Abr. 475.

(c) The statute-merchant, though taken only before the

mayor, chief warden or other discreet man sworn for that purpose, was sealed with the king's seal: the statute-staple,

only with the staple seal.

(d) Dal. Sh. 123.

clergyman, he could not be arrested, but the sheriff was commanded to levy the debt of his goods and chattels by a writ of "*Levari Facias*."

1. A.—"*Extent*" in the King's case.

Statutes-merchant, staple, and recognizances in the nature of statute-staple, have now fallen into disuse ; but,

By 33 Hen. 8. c. 39. all obligations made to the king shall have the same force, and of consequence the same remedy for the recovery of debts due on them, as a statute-staple. Ever since that time, the writ of "*Extendi Facias*" or "*Extent*," by which the sheriff is authorized in one writ, to take person, land, and goods, has been the constant execution at the suit of the crown against its own immediate debtor.

1. B.—"*Extent in aid*."

The same writ also, under the name of an "*Extent in aid*," is issued against those who may be indebted to the king's debtor ; in order that he may be the better able to pay the king's debt by this aidance to the recovery of his own.

This "*extent in aid*" is issued at the instance of the king's debtor ; and in order to obtain it, an "*extent*" *pro formâ* is sued out against him (e) and if it be found thereby, that another person is

(e) Tidd, 1016.

indebted to him, the court on motion, if it be term time, or, if out of term, a baron, on affidavit that the debt is in danger, will grant a warrant or "fiat" for an immediate "extent in aid," without the intervention of a "Scire Facias," which is usually resorted to as a warning process in such cases. (f)

Before this statute of 33 Hen. 8. the goods, person, and all the lands of the debtor, were always liable to execution for the king's debt; but under different writs sued out consecutively; (g) a second not being adopted till its forerunner had proved insufficient.

The "Extent," comprising all these objects at once, under one writ, affords a more simple and speedy remedy than the method formerly pursued, and is in consequence always adopted for the recovery of the king's debts, though not applied in its above comprehensive form, to any other purposes; statutes-staple, and recognizances in the nature of statute-staple, having fallen into disuse.

1. C.—*Extent against ancestor's lands in the hand of heir.*

But, as under the writ of "Elegit," the moiety only of a debtor's lands can be taken in execution, and as by the common law, the whole (h) of the

(f) Tidd, 1016.

(h) Dy. 373. Plow. 441.

(g) Gilb. Exec. 7.

3 Rep. 12.

lands descended from the ancestor were always liable on a judgment against the heir, in an action of debt on his ancestor's bond, an "Extent" is the writ used for so taking in execution the lands *only*, descended from the ancestor; for his *goods* are with the executor, and the judgment being *special*, against the lands descended only, does not affect the heir's person; unless he

1. C.—*How the heir may render himself liable to the same amount as any other defendant.*

Has aliened the lands descended, and sufficient do not remain to satisfy the judgment; (i) has pleaded any plea which he knew to be false, (except "non est factum") or has suffered judgment

(i) 3 and 4 W. and M. c. 14. s. 5, 6. Observe, that if the heir has *fraudulently* aliened the lands descended, and pleads "riens per descent," the plaintiff may take issue by common law on that plea, and if the issue be found for him, have a *general* judgment for the amount of his debt, against the heir; but if the heir has "*bonâ fide*" aliened the lands descended, the plaintiff must reply according to the statute,

"that the heir *had* lands from the ancestor, before the original writ brought or bill filed," concluding with an averment; and if the replication be found for him, the judgment will be *general* against the heir, but only to the *value of the lands descended*. (2 Wms. Saund. 7. note 4.) Perhaps it is safest to reply according to the statute, in all cases where "riens per descent" is pleaded.

by demurrer, "nil dicit," or confession, without confessing the assets descended. (*k*)

In any of these circumstances the judgment may be *general* against him, and the plaintiff may have execution under it, against his person, his goods, or the moiety of his lands, (from whatever source derived) as in the case of any ordinary defendant. (*l*)

However, where the heir has not, before judgment entered up against him, aliened to a bonâ fide purchaser the land descended, but suffers judgment on a false plea as above, or without confessing assets, at the same time having, besides the land descended, no other land, the moiety of which would be more valuable than the whole of the lands descended, or goods to that amount, it will be advisable for the plaintiff to waive such *general* judgment, and still take, as he may do, a special judgment against the whole of the lands descended, only, by suggesting that the heir has particular lands by descent, and praying execution of them: for under the *general* judgment, *half* only of the lands in the heir's possession could be affected, (*m*) from whatever source they might have been acquired.

(*k*) 2 Wms. Saund. 7. note 4. 14. s. 5, 6.

(*l*) 3 and 4 W. and M. c. (*m*) By writ of "Elegit."

1. C.^b—*What shall be subject to an "Extendi Facias," as "assets by descent."*

With respect to what shall be assets by descent, it is laid down as a general rule, that though the ancestor *devise* the estate to the heir; yet, if he take the same estate in quantity and quality that the law would have given him, the devise is a nullity, and the heir is seised by descent, and the estate assets in his hands. As where a man seised of land in fee on the part of his mother, devises it to the heir on the part of his mother, in fee, the heir is in by descent. ⁽ⁿ⁾ So, where a man seised in fee on the part of his mother, devised to his executors for sixteen years for payment of his debts, remainder to his heir on the part of his mother, it was holden, that the heir took by descent. ^(o) So, where one devises land to his heir, charged with a rent issuing out of it, or with the payment of a sum of money, still the heir takes by descent. ^(p)

But where a different estate is devised than would descend to the heir, the disposition by will shall prevail; as where a man having two daughters who are his heirs, devises land to them and their heirs, they take under the will; for, by law, they

⁽ⁿ⁾ 1 Salk. 242. 2 Lord. ^(p) Com. Rep. 72. 2 Str.-Raymd. 829. Plow. 545. 1270.

^(o) 3 Lev. 127.

would take as coparceners ; while, under the will, they have it as joint tenants. (q) But since the statute 3 W. and M. c. 14., such a devise is fraudulent against creditors by specialty, and therefore an action may be brought against the devisee as heir and devisee.

An advowson in gross, in fee, is assets for the payment of debts. (r) So, if a rent in fee, issuing out of the heir's land, descend to him, it is assets though the rent is extinct, for it has continuance for this purpose. (s) So, if there be a mortgage *for years*, the reversion in fee in the mortgagor is legal assets, and the bond creditor may have judgment against the heir, with a "cesset executio," until the reversion comes into possession ; but where it is a mortgage *in fee*, the equity of redemption is not legal assets, and the heir may plead "riens per descent" to an action brought against him on the bond of the mortgagor : (t) it is, however, assets in equity, and the creditor may have relief there. (u)

A copyhold, which descends in fee, is not assets, because, in notion of law, it is only an estate at will ; and though custom has made it an estate of inheritance, yet the tenure is "ad voluntatem domini." (x)

By 29 Car. 2. c. 3. s. 12., an estate "pur autre

(q) Cro. Eliz. 431.

(t) 2 Atk. 294.

(r) Co. Litt. 374. b. 3 Atk.

(u) 2 Vern. 61.

464, 5.

(x) 4 Rep. 22. a. See ante.

(s) Co. Litt. 374. b.

vie," which comes to the heir as special occupant, is made assets by descent, as in case of lands in fee simple, and devisable by a will in writing, signed by the devisor, and three or more witnesses in his presence. A devise of such an estate is held to be within the statute of fraudulent devises, and void against specialty creditors, and the estate is liable to contribute according to its gross value. (y)

Lands which descend in tail are not assets, for it must be a fee simple. (z)

It is laid down as a general rule, that a reversion expectant on an estate tail is not assets; for it is in the power of the tenant in tail, to bar it at his pleasure: (a) but when the reversion vests in possession in the heir, it is assets; and he is chargeable in respect of it, with the payment of the bond. Thus, where D. being seised in fee, on his marriage, settled his estate on himself for life, remainder to his first and other sons in tail, reversion to himself in fee, and died, indebted by bond, leaving a son who devised the reversion to C., in fee, and afterwards died without issue. Lord Hardwicke held, that the reversion, having come into possession in C., the devisee, was assets to satisfy the bond, the devise being fraudulent against the creditor, by the statute, 3 W. and M. c. 14; and he thought that an action of debt might be maintained against the heir and such devisee. If the son had

(y) 3 Atk. 465.

(a) 1 Roll. Abr. 269. (A)

(z) 1 Roll. Abr. 269. (B)

pl. 2. 6 Rep. 42. Carth. 129.

suffered a recovery, the creditor was without remedy ; but if he had levied a fine only, it would have barred the estate tail and let in the reversion, which would be liable to the specialty debts of D. (b)

In this case it appears that the bond was entered into by him who had been once seised in fee in possession, and afterwards created the limitations of the estate, and was the person who died last seised of the fee, and therefore the devisee of the heir, in claiming the reversion on the determination of the particular limitations, was bound to derive his title to it from the obligor.

But in the case of *Smith v. Parker*, 2 Black. Rep. 1230. the court of C. B. went a step further, and held, that where an intermediate tenant for life, remainder to his first and other sons in tail, being in possession of his estate for life, and having the reversion in fee in him, subject to intermediate estate for life, with contingent limitations to the first and other sons of each tenant for life, in tail, entered into a bond and died without issue, the reversion was assets in the heir, when it vested in him in possession to satisfy the bond.

Serjeant Williams, in his note to the case of *Jeffreson and Morton*, 2 Saund, 7. n., seems to consider this case of *Smith v. Parker*, of doubtful authority, and cites many cases which seem to justify such an opinion.

(b) 2 Atk. 206.

1. D.—*Legal possession ; by what writ conferred.*

The writ of “Liberate” is used for the purpose of giving legal possession of lands after inquisition and valuation under an “Extent,” or “Elegit.”

1. E.—*Actual possession ; by what writs conferred.*

The writ of “Habere facias seisinam” is applied to give actual seisin after recovery in a real action, and

“Habere facias possessionem,” actual possession, in ejectment.

1. F.—*By what writ Clergymen are proceeded against.*

“The Levavi facias de bonis ecclesiasticis” is applied to clergymen only, and the execution of church property in their possession.

1. G.—*In what case a party may be taken in execution without writ.*

In one case, a party may be taken in execution, without the intervention of a writ, viz. where

judgment is given against one in view of the court, or in Westminster hall, he may immediately be taken, sent for into court, and committed. (c)

2.—In some cases, by an election of one writ or party to execution, recourse to any other, or a second recourse to the same, is precluded.

Premising, that two different species of execution cannot be *executed* (d) at once, on the same judgment, nor a second writ of the same, or of a species different from its forerunner, 'till that has, by return, been proved insufficient, (e) it must always be remembered, that wherever "*Capias ad Satisfaciendum*" is sued out, and the defendant taken under it, (f) no other writ can afterwards be had, unless the defendant die in execution; for this writ is of the highest nature, inasmuch as it deprives a man of his liberty 'till he makes the satisfaction awarded. (g) But the plaintiff having sued one writ of execution, may, *before* that is *executed*, abandon it, and sue another of a different sort; or he may have several writs of the same sort, running against the defendant or his goods at the same time, in different counties. (h)

Where one writ has been put in force, no se-

(c) 3 Salk. 160.

(d) 8 Mod. 302.

(e) 2 Bac. Abr. Exec. 717.

(f) For although he may have issued execution against the person, a party is not prevented from issuing execution

against the property, provided the execution against the person shall not have taken effect.

Hob. 58. Forster v. Jackson.

(g) Vin. Ab. Exec. (X. a) pl. 9.

(h) Tidd, 985.

cond can be sued out, unless the first be duly returned and filed. (i)

The execution or seizing of lands by writ of "Elegit," is considered of so high a nature, that after it, the body of the defendant cannot be taken, or any second writ of a different species sued out, (k) if the smallest portion of land be seized, and the writ returned executed and filed, though the lands taken be altogether inadequate to the discharge of the debt. (l)

But if under this writ, execution can only be had of goods, because there are *no* lands, and such goods are insufficient to satisfy the debt, "*nihil*" being returned as to the lands; a "*Ca. Sa.*" or other writ may then be had after the "*Elegit*;" (m) for such "*Elegit*" is in this case no more in effect than a "*Fieri Facias.*" (n)

If the defendant has other lands not discovered at the time of the first "*Elegit*," a second may be sued into the same, or another county, or a number may be sued at once into different counties, (without *testatum* writs being sued out,) and all or any of them executed. (o) But where several are awarded, each of them should properly be for the whole debt, that they may agree with the judg-

(i) Id. 1028.

(m) Hob. 2 Cro. Jac. 339.

(k) Cro. Jac. 338. Hob. 57.
8. 2 Ld. Raymd. 1451.

pl. 3. 1 Str. 226. 2 Ld. Raymd.
1451.

(l) Co. Litt. 289. b. 4 Rep.
66. Cro. Jac. 338. 6 Rep. 46.
5 Rep. 87.

(n) Cro. Eliz. 160. Moor,
545. pl. 724. 1 Str. 226.
(o) 2 Wms. Saund. 68. a. n.

ment; and if an "alias" or "testatum" writ is awarded into the same, or another county, on failure of lands being found in the county to which an "Elegit" was first awarded, a prior writ of "Elegit" must be actually sued out and returned "nihil," to warrant it. (*p*)

Indeed it was long holden, that the bare entry of a prayer of an "Elegit" upon the roll, was a bar to all other executions. (*q*) (However, it was even at *that* time holden, that if, after an award of an "Elegit" on the roll, upon a judgment in C. B. the judgment was removed by error into K. B., and affirmed within the year, the plaintiff might have execution by "Capias" or "Fi. Fa.," even though a writ of "Elegit" was sued out and returned by the sheriff, "served," before the judgment was removed into K. B.; because that court could not take notice of it.) (*r*) But on further consideration of the statute of Westminster 2nd., it was adjudged, that an award of an "Elegit" on the roll, should be no longer a bar to execution by "Ca. Sa." or "Fi. Fa.;" but only the sheriff's return, that he had *delivered land* according to the exigence of the writ. (*s*)

If the plaintiff sues out an "Elegit", after having been able to levy only part of his debt under a "Fi. Fa.," the "Elegit" must recite the "Fi.

(*p*) Cro. Jac. 246.

(*r*) 1 Roll. Abr. 905. pl. 2, 4.

(*q*) 1 Roll. Ab. 904. (Y)

(*s*) Hob. 57, 8.

Fa.," and shew how much was levied on it; and so, where a part of the debt has been levied on goods only, under a former "*Elegit.*" (t)

The plaintiff cannot sue out a second "*Ca. Sa.*" against the same defendant, or retake him, after having once discharged him out of execution, although the security given by the defendant on his discharge, should be set aside. (u)

And, with respect to parties, where the plaintiff consents to discharge one of several defendants taken on a *joint* "*Ca. Sa.*," he cannot afterwards retake such defendant, or take any of the others; (x) for the defendants may have satisfaction entered up on the roll. (y)

The execution, on a joint judgment, against two or more defendants, must, following the nature of the judgment, be joint also; and even where (z) two were bound in a bond jointly and *severally*, and the obligee brought several "*præcipes*" on *one original*, and had *several* judgments, it was held that he might not have a "*Fi. Fa.*" against one defendant, and a "*Ca. Sa.*" against the other, but must have the same execution against both. (a) For, (says the authority quoted,) as this ought to be one satisfaction, "*quoad Satisfactionem,*" so it

(t) Hob. 58.

(z) Hob. 59. Vin. Ab. Exec.

(u) 4 Burr. 2482. 1 T. R. N. pl. 1.

557. 2 East, 243.

(a) Vin. Abr. Exec. (X a.)

(x) 6 T. R. 525. Cro. Car.

pl. 20. Godb. 208. pl. 296.

75.

Hob. 58. Forster v. Jackson.

(y) 6 T. R. 525.

ought to be for the *manner* also. However, where the plaintiff brings *several original* writs on a joint and several bond, execution against one defendant does not bar any other species of execution against the co-defendant. (*b*)

3.—But, generally, where there are *joint* defendants and a joint judgment in personal actions, the plaintiff, taking care to sue out execution in their joint names, that it may be warranted by the judgment, (for the writ must strictly pursue the judgment on which it is grounded,) the writs of “*Fi. Fa.*” or “*Ca. Sa.*” may be executed, and the whole damages levied on any one of them singly; and as soon as the debt and damages are *recovered*, the other defendants are discharged. (*c*)

Observe, that where two or more conusors are bound in a recognizance, jointly only, and not jointly and severally, the conusee cannot have execution against the lands of one or more of them without the rest, but all ought equally to be

(*b*) Vin. Abr. Exec. N. pl. 14.

(*c*) 6 T. R. 525. the defendant, on whom singly the whole damages are so levied, in actions of “*Tort*,” can have no contribution from his co-defendants; for in those actions each defendant is liable for the whole; and it may appear inconsistent with the principles of law, to lighten, by any ap-

portionment, the penalties which a wrong doer may incur. But it seems, that in actions against joint defendants, on *contracts*, he on whom singly the whole damages have been levied, may in clear cases bring an action for “*money paid*,” against his co-defendants or any of them, for their aliquot proportions of the expence incurred; or where some of the co-defendants are

charged, for all the lands are equally bound by the recognizance. (*d*)

So, where after judgment docketted, or recognizance entered into, the defendant or conusor, or their heirs, have aliened all the lands bound, and the plaintiff or conusee come upon the terretenants, *all* the terretenants must be joined in the execution, or, if one be dead, his heir; for the land being charged generally, it would not be fair that one purchaser should suffer more than another. (*e*)

Where, after judgment or recognizance, the defendant or conusor, or their heirs, have aliened only a part of the lands, the plaintiff or conusee may proceed against the defendant, conusor, or their heirs, alone, (*f*) (for they being the actual debtors and persons originally bound, it is not unreasonable that they should be charged alone) or against the defendant, conusor, or their heirs, jointly with the terretenants; for the land was subject to the charge, into whose hands soever it passed: but if any, *all* the terretenants must be joined, for the reasons before stated, and cannot in any case be proceeded against, unless the defendant, conusor, or their heirs, be charged likewise. Even where *all* the lands bound have been aliened since the judgment or recognizance, and defendant or

insolvent, obtain relief against	8 T. R. 186.	5 T. R. 556.
the others to a larger amount,	Bro. Exec. 10.	
in equity. 2 Bos. and Pull.	(<i>d</i>) 3 Rep. 13.	
268. This case was an action	(<i>e</i>) Ibid.	
against one of several sureties.	(<i>f</i>) 3 Rep. 14.	

conusor are dead, the terretenants alone cannot be charged until the heir be summoned, or it be returned that there is no heir, or that the heir has not any lands to be charged; for the heir may have a release to plead, or other matter to bar the execution. (g)

If A., B., and C., bind themselves jointly and severally in a statute or recognizance, the conusee may have execution against one singly, or against all of them together, but not against two only; for the execution must pursue the statute or recognizance, which is joint or several; but execution against two is neither one nor the other. (h)

4.—Subject to the rules here laid down, the party suing execution may, in all actions where money only is recovered as a debt or damages, have at his election a “Ca. Sa.,” “Elegit,” or “Fi. Fa.,” against the party chargeable; and regularly the execution ought to be granted by the same court where the judgment was given. (i) If a record comes into the King’s Bench by writ of error, and the judgment be affirmed, execution may be sued there. (k) So if it come into the Common Pleas upon a writ of false judgment, execution may be sued in C. P. (l) Yet, if judgment in Ireland be affirmed in K. B. here, and costs here, there shall

(g) 2 Wms. Saund. 72. p.

(k) 1 Roll. 884. l. 35. 1

(h) 2 Rol. Abr. 468. See Lev. 134.

ante.

(l) Roll. ibid.

(i) Com. Dig. Exec. (I. 1.)

not be execution out of K. B. here directed to the sheriff in Ireland, but there shall be a writ reciting the whole proceeding here, directed to the judges of K. B. in Ireland, commanding them to issue execution. (m)

As the execution on a judgment in an inferior court, (for instance the great sessions in Wales) should be executed within the limits of the jurisdiction of that court, a judgment cannot be moved from such inferior court by "certiorari," or "mitimus," into the King's Bench, for the purpose of suing execution thence, when the defendant's body or effects are still within the jurisdiction of the inferior court; (n) for that the superior court should be made an instrument to serve the inferior court by this way, as it were by a windlass, is not lawful, says the old report. (o)

However, it seems the plaintiff might bring in the superior court an action of debt on the judgment, and so have execution there; or removing the record thither by writ of error, gain a right to execution there, on affirmance of the judgment; (p) and in all cases where final judgment has been obtained on any suit in an inferior court of record, it is allowable for any of the courts at Westminster, upon affidavit made and filed of such judgment

(m) 1 Salk. 321.

execution. 1 Lil. P. R. 252, 253

(n) Except in cases of absolute necessity; as where the inferior court refuses to award

(o) Hut. 117. 1 Lev. 124.

(p) Sid. 213. Vin. Abn Exec. L. 11.

Stat. 5.] Against a Party already in Custody. 183

being obtained, and of diligent search and inquiry having been made after the person of the defendant, or his effects, and of execution having issued against such person or effects, and that they are not to be found within the jurisdiction of the inferior court, to cause the record of such judgment to be removed into the superior court, and to issue writs of execution thereupon against the defendant's person or effects, in the same manner as upon judgments obtained in the courts at Westminster. (q) By 33 Geo. 3. c. 68. s. 1, 33, this provision is extended to the courts in Wales and the counties palatine; but from these courts a transcript is to be removed, and not the record itself, and the latter act extends to all judgments for the defendant as well as the plaintiff. The statutes extend by equitable construction to a prisoner in actual custody, and the record may be removed to charge him. (r)

5.—Where a party is already in custody, he may be further detained by a second plaintiff who has obtained judgment against him, on the regular steps being taken to charge him in execution; but not otherwise, (s) though he was a prisoner for want of bail on “*Capias ad Respondendum*,” at the suit of plaintiff in the same action. (t)

If a defendant be taken upon a “*Capias Utla-*

(q) 19 Geo. 3. c. 70. s. (s) Com. Dig. Exec. C. 11.

4. see post.

(r) 1 H. Bl. 532, 3.

(t) 1 Roll. Abr. 894.

gatum," or "pro fine," he shall be in execution for the party if the party will; for though the defendant is in execution for the king, under the "Cap. Utl." or "pro fine," yet it is in consequence of the party's process; (*u*) but if a "Capias" does not lie for the party in the action, or the defendant is taken by the "Capias pro fine," or "Cap. Utl.," after the year he shall not be in execution for the party without prayer. (*x*)

Or, if defendant taken on a "Ca. Sa." be brought into court by the sheriff, he shall not be committed in execution if the plaintiff does not pray it. (*y*)

6.—In some cases execution cannot be taken out without leave of the court; as on a writ of error "coram nobis;" or, where there is a verdict for the plaintiff against one of several underwriters, and the rest have entered into the consolidation rule, and agreed to be bound by it. So, where in ejectment the landlord is admitted to defend on the tenant's non appearance, and judgment is thereupon signed against the casual ejector, with a stay of execution till further order, the lessor of the plaintiff must apply to the court for leave to take out execution. (*z*)

It is now decided, that where a verdict is taken "pro formâ" for a certain sum, subject to the award of an arbitrator, the plaintiff may take out

(*u*) Com. Dig. Exec. C. 11.

(*y*) Com. Dig. Exec. C. 11.

(*x*) 5 Rep. 88.

(*z*) Tidd, 981.

execution for the sum afterwards awarded, without first applying for leave. (a) The arbitrator in such case cannot award a greater sum than that for which the verdict was taken; and if he do, the plaintiff cannot take out execution for the whole sum awarded. (b)

A plaintiff may sue out execution by a different attorney from the attorney in the cause, without obtaining an order of court for changing the attorney. (c)

(a) 1 East, 401.

(c) 2 Bos. and Pul. 357.

(b) Tidd, 982.

CHAPTER IV.

1. Of the form, teste, and day of return of writs of execution.

2. To what time they have relation, so as to render unavailing any alienation of property, by the party to be affected.

3. The prerogative relation of the king's writs.

1.—**T**HE form of judicial writs, strictly pursuing the judgment on which they are grounded, (*a*) must be according to the approved precedents in those cases ; and, therefore, where, on a writ of "Elegit," which was "Ideo tibi præcipimus quod bona et catalla defendantis quæ habuit die judicii prædicti redditû deliberari facias," omitting "et medietatem terrarum et tenementorum prædictorum," the sheriff took the *lands* and goods, and delivered the moiety of the lands ; the court, on motion, refused to amend the writ after execution, and held that the party must take out a new "Elegit;" the inquisition herein being without warrant, and the sheriff having no authority by this writ to seize the lands. (*b*)

But, it seems, a judicial writ may, in some instances, be amended by the roll, on leave from the court. (*c*)

(*a*) Tidd, 985.

(*c*) 8 Rep. 157.

(*b*) 2 Bac. Abr. Exec, c.

The most usual forms of these writs will be given at the end of the volume.

Every writ of execution, in case of a common person, must bear teste in term-time ; (*d*) for, being the process of that court in which judgment is given, they have no authority for awarding it at any other time : but original writs issuing out of Chancery may bear teste at any time, because that court is always open.

When judgment is entered up in vacation, it relates in point of form to the first day of the preceding term, and execution may be sued out on it by a writ tested as of the preceding term : for the plaintiff, having run through the whole course of a judicial proceeding, and his cause being ripe for execution, it would be unreasonable to oblige him to wait till the ensuing term, by which he might be disappointed of the effect of his judgment.

However, though the execution sued in vacation may bear teste as of the preceding term, and has the same relation back, as the judgment, yet the party suing it out must take care that it be not executed till after judgment duly signed. (*e*)

The writs should be made returnable in term-time, on a day certain, by bill ; on a general return day, by original. It was formerly necessary that there should be fifteen days between the teste

(*d*) 2 Bac. Abr. Exec. (*e*) 7 T. R. 20.

and return of the "Ca. Sa." and "Fi. Fa." by original; but, as that was found inconvenient, it was enacted, by 13 Car. 2. c. 2. s. 6., that, in all actions of debt, and other personal actions, and also in all actions of ejectment depending by original writ in the Court of K. B. or C. P., after any judgment obtained therein, there need not be fifteen days between the teste and return of any writ of "Ca. Sa." or "Fi. Fa."—nor shall the want thereof be assigned for error.

This statute, however, does not extend to any writ of "Ca. Sa." whereon a writ of "Exigent," after judgment, is to be awarded; nor to any "Ca. Sa." against the defendant, in order to render his bail liable; and, for the purpose of charging the bail, there ought to be fifteen days between the teste and return of the writ, by original; and eight, by bill. (f)

If the writs be tested, or made returnable out of term,—or, in an action by bill, made returnable on a general return day,—they are void, or at least erroneous, and may be quashed, or set aside on motion, together with the proceedings that have been had under them. But a "Ca. Sa." against their principal, returnable out of term, is not void as far as the bail are affected by it, though it may be set aside by the principal, on motion for irregularity. (g) And if a writ of exe-

(f) Tidd, 986. 1027.

(g) 2 Burr. 1188.

cution bear teste out of term, the sheriff is justifiable in executing it; for he is not to judge of the validity of the process, provided the court out of which it issues has jurisdiction of the matter. (*h*)

But, though he is justifiable in executing such process; yet, if he lets a person escape whom he arrested under it, no action lies against him; for the writ was erroneous. (*i*)

As those judicial writs, which are executed by the sole authority of the sheriff, need not be returned, and are, at least, good, when duly executed, though never returned, (*k*) it has been held that a "Ca. Sa." may be returnable the next term but one after the teste; for, in this case, the intervening term makes no discontinuance, it not being necessary, as on a "Capias" in mesne process, that the defendant should have a day in court; for his cause is at an end, and he must be in prison whether the writ be returned or not:—whereas, on a "Capias" in mesne process, he might be greatly aggrieved by imprisonment in the mean time.

So, if "nulla bona" be returned to a "Fi. Fa.," a "testatum Fi. Fa." may issue, the day following, to another sheriff; for though, on mesne process, there can be no "testatum" till the "quarto

(*h*) 2 Salk. 700.

(*k*) See the reason post.

(*i*) Ibid. 2 Ld. Raymd. 775.

die post;" yet it is otherwise with writs of execution; for, in these, the party has no day in court. (*l*)

Writs of "Ca. Sa." and "Fi. Fa." must be signed as well as sealed, and may be amended by adding or altering the teste or return. (*m*) In the Common Pleas, all executions are required to be signed by the prothonotary, and must be signed before they are sealed. (*n*)

2.—In point of form, writs of execution against goods and chattels have relation back, as to affecting goods and chattels, to the time of their teste, which, as we have seen above, may be immediately after judgment signed; and, formerly, goods and chattels were bound by the award of execution, though afterwards sold "bonâ fide;" (*o*) but as this relation back was often, in the case of bonâ-fide purchasers, attended with obvious injustice, it is enacted, by the 29th of Charles 2d. c. 3. s. 16. that no "Fi. Fa." or other writ, shall bind the property of goods, but from the time such writ shall be *delivered* to the sheriff to be executed, who, on his receipt of it, shall endorse the day of his receiving the same; that is, that, if, after the writ is so delivered, the defendant make

(*l*) 2 Salk. 700. 2 Jon.
200.

(*m*) Tidd, 986. 1027.

(*n*) Id. 986.

(*o*) Cro. El. 174. Cro. Car.

149.

an assignment of his goods, (except in market overt) the sheriff may any where take them in execution. (p) So that, if the defendant sell his goods to a bonâ fide purchaser before the delivery of the writ, or they be resold (before such delivery) by a fraudulent purchaser to a bonâ fide purchaser, they cannot be taken in execution ; (q) but, if sold by the defendant after delivery, or fraudulently before, they are liable in the hand of the vendees.

However, if A., indebted to B. and C., after being sued to judgment by B., go to C., and voluntarily give him a warrant of attorney to confess judgment, on which judgment is immediately entered up, and a writ delivered on it, before B.'s writ, such preference is not unlawful or fraudulent ; (r) and by 29 Car. 2. goods bought at a sale under an execution, are safe in the purchaser's hands ; though, as to any other party, they were bound by the prior delivery of another writ, under which the sheriff ought to have taken them : and this, for furthering the ends of justice, which would be frustrated, should purchases made under executions be invalidated. (s)

But if a writ of execution be *delivered* to the sheriff, and the defendant become bankrupt before

(p) 2 Eq. Cas. Abr. 381.

(r) 5 T. R. 235.

† 1d. Raymd. 252.

(s) 1 T. R. 729.

(q) Godb. 161.

it is *executed*, the execution is superseded; for the property, as against bankrupt-assignees, is not altered by the delivery, but by the execution of the writ, and ceased to be in the defendant, from the time of the act of bankruptcy committed; (*t*) (if the sheriff, after notice, *will* proceed to execution, he is not a trespasser, though he would be liable in trover:.) (*u*) But where the king's writ is contending for priority, the assignee's property, in the bankrupt's effects, does not relate, as usual, to the act of bankruptcy, but only to the actual assignment; (*x*) for the king is not named in the statutes relating to bankrupts.

The statute of 29th Charles the 2nd. c. 3. s. 16. being made in favour of purchasers, does not alter the old law as between the parties to execution; therefore, if the execution be tested as in the defendant's lifetime, it may be taken out, (*y*) and executed after his death. (*z*) And it has been holden, that if the plaintiff die after a "Fi. Fa." sued out, it may be executed notwithstanding, and plaintiff's executor or administrator shall have the money. (*a*) If the plaintiff have appointed no executor, or administration be not committed, the money must be brought into court. (*b*)

(*t*) 1 Ld. Raymd. 252.

(*x*) Gilb. Exec. 15, 16. Cro.

(*u*) 1 T. R. 475.

Eliz. 181.

(*x*) 4 T. R. 402.

(*a*) 1 Salk. 322.

(*y*) 1 Ld. Raymd. 695.

(*b*) Noy. 73. 2 Ld. Raymd.

Com. Rep. 117. Bunb. 271.

1073.

12 Mod. 5. 2 Ld. Raymd. 850.

As to land, the judgment having relation, in point of form, (unless any thing appear on the record, shewing that it cannot have that relation,) (c) to the first day of the term whereof it is entered, (d) or of the preceding term, when entered in vacation,—and execution relating to the judgment,—the execution affects whatever freehold lands the defendant, or any person in trust for him, (e) were seized of at or after the time to which the judgment relates; and where there is a term attendant on the inheritance, the judgment being a lien on the inheritance, the execution consequently affects the term in like manner: (f) But, in general, leasehold property is only bound, as against the defendant, by the suing out, (g) and, as against purchasers, by the *delivery* of the writ of execution to the sheriff. (h)

The writ of execution affects freehold lands *as against purchasers*, by relation only to the time of *signing* judgment, or the enrolment of a recognizance, and not to the first day of the term in which it was entered; (i) and it is now (in consequence of the statute 4 and 5 W. and M. c. 20.

(c) 3 Burr. 1596.

(e) 29 Car. 2. c. 3. s. 10.

(d) 3 Salk. 212. 1 Wils. 39.

(f) 2 Vern. 525.

7 T. R. 21. In actions by original, the judgment seems to relate to the essoin day; in actions by bill, to the first day in full term. 2 Wms. Saund. 148. f.

(g) Godb. 161. 8 Rep. 171.

(h) 3 Atk. 739. 1 Ves. 195.

Sugd. V. and P. 306, 310, 450.

(i) 29 Car. 2. c. 3. s. 14, 15.

s. 2 and 3. made perpetual by 7 and 8 W. 3. c. 86. s. 3.) become necessary that the judgment should be *docquetted* according to the directions of that statute, in order to affect the land as against purchasers and mortgagees; and of course the writ of execution affects the lands only from the time of such docquetting; for, in consequence of this docquetting, purchasers may very readily ascertain whether or no the lands are charged by a judgment, and cannot now be aggrieved by purchasing in ignorance of such charge, as they might have been before the statutes enacted in their favor.

If the judgment be not docquetted, (*k*) or if there be a false docquet, (*l*) though a right judgment, the purchasers or mortgagees will be safe from the execution; and the party grieved must take his remedy against the attorney or officer, for not docquetting truly. (*m*)

Still, we must recollect, that these statutes are confined to purchasers, and do not apply as between the parties to the suit: therefore, if defendant die in vacation, judgment may still be entered after his death, and execution sued thereon, as of the preceding term; and it will be a good judgment and execution at common law, as of that term; (*n*) but then the roll ought to be brought in and filed before the *essoin* day of the subsequent term: (*o*) and

(*k*) 1 Str. 639.

(*l*) Tidd, 921.

(*m*) Tidd, 921.

(*n*) 1 Salk. 87. 3 Salk. 116.

2 Id. Raymd. 786. 7 T. R. 20.

(*o*) 1 Salk. 87.

it seems that if judgment be *signed* in term time, and in the subsequent vacation the defendant sell land, and before the essoin day of the next term the plaintiff enter his judgment, it shall affect the lands by execution, in the hands of the purchaser. (p) Sed quære,—if the judgment be not docketted at the time of the sale.

In actions of debt against the heir on the bond of his ancestor, the execution relates, as between the parties to the action, (for if the heir alienes before judgment, the land is protected in the hands of a bona fide purchaser, by the statute 3 and 4 W. and M. c. 14. s. 5, 6.) to the time of original purchase, (q) or bill filed; (r) because the action was brought against the heir in respect of the land descended; (but the execution on a judgment against the ancestor, relates only to the lands which the ancestor had at the time of the judgment docketted, because the action against *him* was brought in respect of the *person* and not of the land;) (s) Hence, it hath been adjudged, that if there are two creditors, viz. A. and B. of I. S., whose heir is bound, and has lands by descent, and A., in an action against the heir, has judgment by default; and thereupon an “Elegit” issues, generally, against all the lands of the heir, and a moiety thereof is delivered to A.; and *afterwards*, B. ob-

(p) 6 Mod. 191. Sugd. V.
and P. 448, 9.

(r) Carth. 245.

(s) Co. Litt. 102. a

(q) Co. Litt. 102. b.

tains a special judgment against the assets confessed by the heir, though B.'s judgment be subsequent to A.'s; yet, it appearing that B.'s bill or original was filed before A.'s, the judgment and execution must have relation to such prior filing, and therefore B. shall be first satisfied. (t)

Also, in the foregoing case, it seems that though A.'s judgment *had* been on an original actually filed before B.'s; yet B. must have been preferred, because A.'s judgment was general against the heir, and the execution a general and common execution, by "*Elegit*," which relates only, as we have seen, to the time of judgment signed, at furthest; while B.'s judgment being special against the assets descended, his execution was special also, and related to the time of his bill or original filed. (u)

In Middlesex and Yorkshire it is required, by statute, (x) that judgments and recognizances should be registered; and, in those counties, lands are not charged by a judgment or recognizance, as against purchasers, until the time of such registry. Execution, therefore, in those counties, only relates to, and affects lands from, the time of registering the judgment or recognizance.

3.—It is a rule, that an extent for the king cannot be antedated, but must bear teste the day it issues, though that be out of term; for it issues

(t) Carth. 245. *Gree v. Oliver*.

(u) Carth. 181, 246.

(x) 5 Ann. c. 18. s. 4. 6 Ann. c. 35. s. 19. 7 Ann. c. 20. s. 18. 8 Geo. 20. c. b. s. 1, 18.

out of the equity side of the exchequer which is always open. (y)

Immediate extents for the king take place among themselves, according to their teste, (z) and shall be preferred to extents in aid. (a) Debts due to the king's debtor are not bound by the teste of the extent, but only from the caption of the inquisition. (b)

However, the maxim, "nullum tempus occurrit regi," applies in its fullest force to the king's executions, wherever they may be contending for priority with the execution of a subject.

This branch of the subject before us deserves the most serious consideration; the king's precedency in execution therefore shall be shewn under two heads; first, as it relates to lands; secondly, as to goods.

3. A.—All lands and tenements held by the king's accomptants, receivers general of counties, and other persons filling the offices enumerated in 13 Eliz. c. 4., (c) are liable to, and charged with, the

(y) 2 Str. 749.

(z) Parker, 281.

(a) Ibid.

(b) Bunb. 265.

(c) These offices are, treasurer or receiver of the courts of exchequer, wards and liveries, or Duchy of Lancaster, treasurer of the chamber, confederer of the household, war

treasurer, treasurer of garrisoned fort, town, or castle, treasurer of the navy or admiralty; treasurer, under treasurer, or other accountable person of the mint; receivers of sums of money, imprest or otherwise, or for the use of the king, or for fortifications, buildings, or works; or for any other

king's debt, from the moment their possessors entered into the office causing such liability; though they may not have become actually indebted, till long after their entering into the office. (d)

All lands and tenements held by persons indebted to the king by bond or record, are liable to and charged with the king's debt, *from the time it was contracted.* (e)

The king's execution, therefore, against parties filling the offices above specified, and against those indebted to him by bond or record, (f) *relates to the time when those offices or debts were entered*

provisions to be used in the offices of the ordnance, armory, wardrobe, tents and pavilions, or revels, customer, collector, farmer of customs, subsidies, imports, or other duties in any port, collector of the tenths, subsidies of fifteenths, *receivers general of counties*, clerks of the hamper, and (by c. 7.) under collector of tenths.

(d) 10 Rep. 55.

(e) 8 Rep. 171. 2 Roll. Abr. 156, 7. The king's execution, on a bond assigned to him, relates only to the date of the assignment, (Lit. 124, 5. Savill. 11. Lane, 65. Executor). By 7 Jac. c. 15. no debts shall be assigned to the

king but such as were bond fide due to his debtor or accountant. See Hob. 258. And when bonds for the performance of covenants are assigned, a "Sci. Fa." must issue as the first process. (2 Leon. 55, 77. Owen, 46.)

(f) For bond debts due to the king (33 H. 8. c. 39.) and debts contracted, whether by bond or otherwise, by persons filling the offices above specified, are (by 13 Eliz. c. 4.) to have to all intents and purposes the same effect as a statute-staple, which binds the lands from the time it is entered into.

into; and all lands held by the debtors at that time, or afterwards, are liable to such execution, into whose hands soever they may have come; for the king's debt is in the nature of an original charge on the land itself, and therefore must subject every one that claims under it: (g) but if the lands were aliened in the whole or part, before the office or debt entered into, the alienee in such case claims prior to the charge, and the land is not subject to it. (h)

(It must here be observed, that *chattels* real, as terms for years, are only bound, *as against purchasers*, from the actual commencement of the king's process; and therefore if parties filling any of the offices above specified, or indebted to the king by bond or record, aliene *chattels* real after entering into such office or debts, and before the commencement of the king's process, the chat-

(g) Whether, if the *trustee* of lands of the king's debtor (by bond, record, &c.) or *acomptant*, joins in the conveyance to a purchaser who has not notice of the debt, the lands will be chargeable in the purchaser's hands, is a point on which the opinions of eminent lawyers still continue to differ; it was decided that they *were* liable, in a case which lately arose on the sale of the estates of Col. Montessor. (From an opinion of Mr. Butler's) 1 Wight, 34.

(h) Lands *found by inquiry* to have been purchased in the names of other men, or to secret uses, by persons filling the offices above specified, are liable in the same manner as other lands. (13 Eliz. c. 4. s. 5.)

tels are safe in the hands of *bonâ fide* purchasers. (i)

So, if actually delivered in execution at the suit of a subject, before the commencement of the king's process; for the property is altered, and a charge upon the chattels fails by such alteration.)

Though the king's *simple contract* debt, like his other debts, binds the land as against the debtor, from the time it was entered into; yet the king's process for such his simple contract debt, will not affect such lands in the hands of one who purchased them *bonâ fide* before an extent issued, without notice of the crown debt, (k) unless the debtor by simple contract were one of those specified in 13 Eliz. c. 4.

We have seen, that (with the exception of chattels real) the king's execution against his debtor by record, bond, or office, relates back for lands, as against such *debtor*, and even *bonâ fide purchasers*, to the time of the debt or office entered into; but with respect to *judgments* recovered by subjects against the king's debtors, the king's execution shall not supersede or over-reach the subject's execution, unless the king's *process* is commenced

(i) 8 Rep. 171. 2 Roll. Abr. 156, 7.

(k) Rex v. Smith. Exchequer sittings at Serjeants' Inn, after Easter term, 50 Geo. 3. 1 Wight, 34. where it was held

that a term of years would not protect a purchaser against crown debts, although he purchased *bonâ fide*, and without notice. See Sugden's V. and P. 350.

before judgment given in favour of the subject. (l)

A debt of record implies a previous process, or precantion equivalent to process; and the king's debt, like the subjects, if prior on record, binds the debtor's lands into whose hands soever they come, (m) even by execution.

It seems too, that the king's debt of record has a relation back, and binds the lands of the debtor from the time that he became indebted; so that although the king's record did not exist, or even the process which might have led to it, commence till *after* a judgment recovered by the subject; yet if the *debt* on the king's record existed before judgment given for the subject, the king's execution shall supersede the subject's, if sued out at any time before actual *delivery* of property to the subject on his execution. (n) And if the subject, having a record prior in date to the king's, *lie by*, and forbear to sue execution on it against the king's debtor, the king may come in; and lands taken under his extent shall not be evicted by the subject's prior record, *quod nota*.—Himgate and Hall, 3 Leon. 239. 4 Lane, 10.

But where the king's debt is not on record, he shall not now (as he might before the 33 H. 8. c. 39.) "be preferred and first have execution," either by granting his debtor a protection against

(l) 33 Hen. 8. c. 39.

Saund. 70. e.

(m) Tidd, 1018. 2 Wms.

(n) 2 Wms. Saund. 70. e.

a subject's execution, (o) or by snatching from a subject, *after it is vested by delivery*, the effect of the subject's execution, unless the crown process be commenced before judgment given for the subject.

However, even at this day, if the king's process for any debt whatever, issue at any time *before the actual delivery* of property in execution to a subject, the king's execution shall be first satisfied; (p) so that nothing less than execution finally executed

(o) Co. Litt. 131. b. Godb, 290. Reg. Brev. 281.

(p) Thus an extent for a penalty recovered by the king under a penal statute, has been preferred to a subject's execution commenced, but not finally executed; the extent for the penalty recovered having issued before the actual *sale* of the defendant's goods under the subject's "Fi. Fa." (1 East, 338.)

The construction of the clause in the statute 33 H. 8. c. 39. as it may be collected from that statute, at large, and from the law prior to it, seems to be this—"If the king's process issue *before the actual delivery of property in execution* to a subject, the king's execu-

tion shall be first satisfied: but if the king's process issue *before judgment given* for a subject, the king shall be first satisfied, *even though his debtor's property has actually been delivered in execution to the subject.*"

The restriction imposed consists in confining this latter extensive prerogative to those cases only where the king's process issues *before* judgment given for the subject; whereas formerly, it was exercised in all cases. Much, however, may be advanced in support of a very different construction of the statute, though, since the decision in *Rex v. Wells*, the law stands as above,

shall bar the effect of the king's process. See *Rex v. Wells and Allnutt*, in a note to 16 East, 279.

3. B.—As against goods or personal property, the king's execution only relates to and has precedence from the teste of his writ. (q) Therefore, if the king's writ be tested, before the property in his debtor's goods has been actually altered; that is, taken from the debtor and transferred to another, the king's execution shall be preferred to the subject's, or to the subject's inchoate right; but if the king's writ be tested after his debtor's personal property has, *bonâ fide* by execution or sale, been transferred to another, that property cannot be taken on an extent. (r)

Thus, if the king's debtor sell a lease *bonâ fide* before the king's process commences, the king is bound by the sale. (s)

The property in goods is *bound* as between subject and subject, by the delivery to the sheriff of a writ of execution against them; (t) but the king not being named in the 29th Car. 2. c. 3. s. 16., the property in them is not *altered* as against him, until they have been actually sold or delivered to a third party.

If, therefore, the king's process be tested, posterior to a judgment recovered by the subject, and

(q) The statute 29 Car. 2. king.
 (by which writs of execution (r) 4 T. R. 411.
 bind goods, not from the teste, (s) 8 Rep. 171.
 but from the delivery to the (t) 29 Car. 2.
 sheriff) does not extend to the

writ of execution against *goods* thereon *delivered* to the sheriff; but before it is finally executed, the king shall be preferred. (u)

By the various statutes relating to bankrupts, the property in a bankrupt's goods is altered, and becomes vested in his assignee, not from the time of *their appointment*, but, by relation, from the time that the act of bankruptcy was committed. However, we must observe, that as the king is not named in these statutes, so neither is his prerogative affected by this fictitious relation in the assignees. Wherefore, the bankrupt's goods are liable to the king's execution *after* an act of bankruptcy, if the king's process be commenced at any time before an actual assignment of them. (x)

In a distress for rent, the property in the goods taken cannot be said to be out of the party distrained on, till the actual sale of the goods at the expiration of the five days. An extent therefore against the king's debtor, tested, *after* a distress taken for rent, notice given to the tenant, and appraisement made, but *before sale* of the goods distrained, shall prevail against the distress. (y)

Though under the king's extent, debts due to the king's debtor may be taken in execution, and if not forthwith discharged, the effects of the person so indebted; yet this must be understood of debts actually due and payable to such debtor, at the

(u) 16 East, 279.

(x) 4 T. R. 411.

(y) Bunb. 42, 3. 269. Par-

ker, 112.

time the king's writ is issued, and not merely "debita in præsentì solvenda in futuro;" for the king's writ has not power by relation to render a person liable to the consequences of a debt, before the time originally agreed on by him for his becoming liable to such consequences.

Hence, execution at the suit of the crown can affect neither the king's debtor, nor a debtor of the king's debtor for their acceptance on a bill of exchange before the day on which the bill is made payable. (z) Nor can the obligor of a bond made to the king's debtor be affected by execution at the suit of the crown, till the day on which the sum secured by the bond is made payable; (a) though it should seem, the king seizing such bond presently into his own hands, may wait till the day appointed in it for payment, and then proceed to levy the debt against the obligor.

Wherever an extent might have issued against a party in his lifetime, a writ of "diem clausit extremum," which is in the nature of an extent, may issue against his estate after his death; (b) and such a writ may issue on commission, (c) against the estate of a simple-contract debtor, though he

(z) Hughes's report of the case, "the King v. Bebb and others," and the authorities there referred to, page 53, 99, 106, 110.

(a) Id. 99, 110, 106. the reader is particularly referred

to Chief Baron Macdonald's and Baron Thompson's argument on the judgment in this case.

(b) Banb. 119.

(c) See post.

was not the king's debtor by record at the time of his death: (d) but no "diem clausit extremum" can issue regularly against one who was not debtor to the king, or found in his lifetime to be indebted to the king's debtor. (e)

So little has appeared before the public on the subject of extents at the suit of the crown, and of that little so much has been set aside (f) by the late decision in the case of the King v. Wells and Allnut, that the preceding section contains the substance of nearly all the valid decisions on this matter. It will not, however, be foreign to the subject to consider, more at large, the prerogative of the crown with regard to its debtors, in some points of nice discrimination.—First, then, as to

1.—*What act or receipt will make a party debtor or accountant to the king.*

Two persons *recommended* a third as sufficient to be the king's mint-master; the party recommended became a defaulter, and judgment was given that the two persons recommending should be charged to the king, to repay the money which

(d) Parker, 95.

(e) Id. 16.

(f) See the cases of Borke

v. Dayrell, 4 T. R. 402. Up-
pom v. Sumner, Bl. R. 1251.

1294.

the king had paid in default of the mint-master. (g)

A sheriff entering on his account in the exchequer for amerciaments and issues forfeited, becomes debtor to the crown; and the person forfeiting is discharged against the crown for ever, but is debtor to the king's officer. (h)

Sir Walter Mildmay, as Chancellor of the Exchequer, had received 1160*l.* from the teller of the exchequer, for his diet, &c. by an appointment under the hands of the treasurer and under-treasurer, which was adjudged an illegal appointment; and therefore, though he did receive it to his own use, yet it being the crown-money, and he knowing it was so, the law created a privity between him and the crown, and made him accountable for it, and his executors after him; and, in an information in the nature of an action of account, they were obliged to account for the money. (i)

So, in the Earl of Devon's case, (k) who, by virtue of a privy seal, which was adjudged insufficient for that purpose, having taken to his own use and sold cast and unserviceable iron, his executors were charged by an information as above, and adjudged to account. (l) —N. B. In such informations the king may charge persons receiving

(g) 2 Roll. Abr. 161. Roll adds, a "*quære de ceo.*"

(h) Keil, 187, 8 H. 8. 3 Inst. 116,

(i) Cro. Eliz. 545. 11 Rep. 90.

(k) Ibid.

(l) Ibid.

as bound to render an account to the king, and need not charge them as bailiffs or receivers, as actions of account at the subject's suit must do. (*m*) If a steward of a manor belonging to the crown assess a small fine upon admittance, and underhand takes a greater, he is accountable for the whole. (*n*)

C. was receiver, and sold his office to D., who, not having money of his own at the day of payment, it was agreed that the vendor should come at the next receipt; when D., by the money he then received, paid for the office. Afterwards, D. became indebted to the crown, and C. was charged with this money, and obliged to answer for it to the crown. (*o*)

So that, if money, or goods, or chattels, of the king come to the subject's hands, either by matter of record, or matter in fact, the subject is answerable to the crown. (*p*) But the party receiving

(*m*) Cro. Eliz. 545. 11 Rep. 90.

(*n*) Ibid.

(*o*) Lane, 23.

(*p*) Plow. Comm. 321. A., indebted by bond to B., dies; and goods of A. come to the hands of C. for A.'s executors. At the time of A.'s death neither A. nor B. were indebted to the crown; but, on B.'s becoming so afterwards, an extent in aid of B., in the nature

of a "diem clausit extremum," issues against C, for the goods of A, in his hands. Held, that, as neither A. nor B. were indebted to the crown at the time of A.'s death, such a writ did not lie against C. for the goods of A.; (Magna Charta, c. 18.) but that a Sci. Fa. should have issued against A.'s executors. —Attorney General pro Shepherd v. Goldsborough. —Judgment for the king in Scacc,

must know it is the king's money ; for, if a party sell to the king's receiver, who pays him with the crown's money, and the vendor is not privy to it, he shall not be answerable. (q)

Lord North, Chancellor of the Court of Augmentation, took a bond of A. for money payable to the crown, and ordered his servant to carry the bond to the clerk of augmentation : his servant carries the bond to the obligor, and between them it is cancelled ; and, per touts barons, Lord North chargeable for the bond ; but, afterwards, discharged in equity, and the lands of the confederates made liable. (r)

2.—*How far the courts take notice of the King's debt, and will stop money brought into court by, or payable to, his debtor.*

A juror being convict in a "decies tantum," went first into the exchequer, and discharged the crown moiety, and then returned and paid the other moiety into the hands of the plaintiff's attorney ; but the king's serjeant acquainted the court, that the plaintiff was greatly indebted to the crown, and prayed that the money might be stayed

26th Nov. 1687, writ of error the law as above.

and judgment reversed, Mich. (q) Cro. Eliz. 545.

1694, the reversal establishing (r) Dy. 161.

in the court till he had discharged the said debt; and the court did this. (s)

A sued execution on a statute staple against B., and the sheriff returned that he had extended the conusor's lands, but did not return that he had delivered them to conusee: a friend of B.'s comes into court, and brings a writ out of Chancery, reciting that B. was debtor to the king, and thereupon prays that execution should stay till the king's debt was levied; and it was done. (t)

A writ of debt was brought on a bond, and the king's serjeant shewed that the plaintiff was outlawed, and prayed livery of the bond; but per Brian, "this is not matter to avoid the action; nor can we give you judgment upon this plea, as justices, there being no writ: but if the king had brought an action of Detinue, and this matter had been confessed, perhaps judgment might have been given." (u)

3.—*Of the king's remedy against the goods, chattels, and debt of his debtor, in certain cases.*

It has already appeared, (x) that, for satisfaction of his debt, the king may seize the person of his debtor; and, to the extent of interest the debtor had in them, all the lands (except copy-

(s) Fitz. Abr. decies tantum, 38.

12. Plow. 322.

(t) Fitz. Abr. execution, s.

(u) 4 H. 7. 17 Pl. 3.

(x) See ante.

hold (y)) which the debtor possessed at the time of the debt contracted, or afterwards, together with the goods and chattels unalienated at the teste of the writ of extent.

These latter require, in some circumstances, further consideration.

By Magna Charta, c. 18., upon the death of the king's tenant and summons for the debt the deceased owed, the sheriff may attach; and by the view "*legalium hominum*" may inventory all his goods and chattels to the value of the debt; and *nothing shall be removed till the king's debt is paid.*

Upon this statute the writ of "*diem clausit extremum*" is founded; and the king shall be preferred by executors, in satisfaction of his debt, before any other, (z) after funeral charges, expences of probate, or taking out letters of administration, are defrayed. (a)

(y) Hard. 432. Kitch, 123. If a trustee of lands be attainted, or his property seized for a crown debt, the king holds the lands discharged of the trust. However, it is usual to grant such lands to the *cestui que trust*.

(z) 2 Inst. 32.

(a) 1 Roll. Abr. 926. (S.) pl. 1. As an executor may plead in bar of an action, judgments (against himself as

executor, or against his testator,) unsatisfied, though no execution has issued on them; and as the king's debt ranks in the chain of distribution, before judgments, it seems *à fortiori*, that the executor may plead to an action, the king's debt, unsatisfied, though no process may have issued thereon; of course the proof of the debt lies on the executor. Per Choke, if the king's debt,

First, not only the goods and chattels of which the king's debtor has the absolute property in possession, but such also as another has as his trustee, are liable to the king's execution ; and therefore, if a person outlawed, buys goods in another's name the king shall have the goods. (b)

Secondly, if two are possessed of a horse or an ox, as joint-tenants or tenants in common thereof, and one is outlawed or attainted, the king may seize the whole ox or horse. (c) The true reason of this seems to be, that the property specified is not easily divisible, and it would be beneath the king's dignity to be joint-tenant or tenant in common with a subject ; accordingly, where the property was in its nature severable, there seems to have been a different decision ; though Lord Coke finds a reason for it in the distinction between property which comes to the king by attainder, and property which comes to him by grant. The case is thus :

The queen brought an information in the nature of "trespass," for cutting her trees, and upon special verdict, the case appeared to be, that Andrew Love, and twelve others, were possessed of

in such case, be not of record, then it cannot be pleaded in bar ; aliter, if it is. 21 E. 4. fol. 21. pl. 2. 1 Anderson, 129. But see Moor, 193. A judgment recovered against the *testator*, shall be preferred by the executor, to a bond assigned

to the king, after testator's death. Lane, 65. aliter, if the judgment had been recovered against the executor. Attorney General v. Hart, Trin. 1686, in Sccio. MSS.

(b) 12 Rep. 2.

(c) Plow. 243, 323.

the trees as joint grantees, inde per le owner del soile: Andrew, being indebted to the queen, assigns, by deed enrolled, all the trees to the crown: Coke, for the defendant, agreed, that if Andrew had been outlawed or attainted, the queen had been thereby entitled to all the trees, because these are acts in law; aliter per grant; because one of the joint-tenants shall not prejudice the other by his grant: but the book concludes with a quære of this difference, (d) and the barons gave the defendant a further day. Now, a joint-tenancy in lands is severed by an extent; (e) and if the king's debtor be lessee or tenant in common with another, and the land is fed by both their beasts, the beasts of the other tenant cannot be seised for the king's debt. (f)

If a man is member of a corporation which is fined, the goods which he has in jure proprio, shall not be seized for the fine. (g)

Thirdly, The king may seize the cattle of a stranger levant and couchant on the land of the crown debtor, but cannot sell them, unless it be averred that they were levant and couchant. (h) And if the king's tenant suffer arrears to be incurred, and then lets the land to another, the king may distrain the goods of the lessee in any place; deins vel dehors del terre charge; but he cannot

(d) Cro. Eliz. 265.

159.

(e) Gilb. Exec. 41.

(g) 2 Roll. Abr. 159.

(f) Lane, 96. 2 Roll. Abr.

(h) Ibid.

sell them, because it is not clear whether rent be due or not. (i)

Fourthly, If the king's debtor be an executor, the king shall not have the goods of his testator ; (k) and thus the conusee of a statute dies intestate, and administration is committed to his wife, who takes another husband, who becomes indebted to the king, the statute cannot be extended for the king's debt. (l)

Fifthly, It is stated in Sir G. Fleetwood's case, (8 Rep. 171.) on the authority of 50. Ass. pl. 5., that if baron and feme are joint-tenants of a term, and baron becomes indebted to the crown, the king may have execution of this term after the baron's death, because, (says Coke,) the baron had it in his power to dispose of the term during his life. This, however, seems an insufficient reason, and Rolle says, he does not see how it can be law ; (m) for the husband has equally a power to dispose of any other chattels belonging to his wife, such as her jewels, &c. ; and yet, if he omit to do so, they vest in the wife absolutely on his death, and are no longer liable to his debts. The king's execution too, against chattels, (real or personal), has no relation back, but binds them only from the date of

(i) 2 Roll. Abr. 159.

(k) 2 Roll. Abr. 806.

(l) 2 Roll. Abr. 159.

(m) 2 Roll. Abr. 157. If a party purchase or convey lands to himself and his wife, (for

her jointure,) and to his heirs, and then become indebted to the king, and dies so, no execution having issued during his life, the land cannot be charged during the life of his wife. Id. 156.

the teste; and if, before that date, they are bona fide vested in a third person, on good consideration, the king's writ comes too late. (n) It is clear that the wife's dower cannot be touched for debts due to the king from her husband: (Co. Lit. 81.) Why then should property which she has in her own right?

Sixthly, If the king's debtor have interest in goods as lessor, pawner or mortgagor, such goods shall not be liable to seizure, before the tenure expires for which they are leased; or unless the king pays the money which is borrowed on them. (a)

Seventhly, It has appeared, (p) that in the case of the king, debts and duties, which are only choses in action, are to be considered as goods and chattels; thus,—

If a party be indebted to one who is outlawed, and this is found by office, the king shall have the debt: (q) but, per Hanymer and Holt, he shall not, unless it be a debt by obligation, because this would place the party in a worse condition than he stood in before, for he cannot wage law against

(n) Fleetwood's case, 8 Rep. to the king's hands, cannot be

(q) Plow. 487. Bro. Barre, the subject of an extent against the heir in tail, as might have

(p) See ante. been a bond given directly by the ancestor to the king. Anderson's case, 7 Rep. 33 H.

(q) 59 Ass. pl. 1. A bond given by a tenant in tail to one who is afterwards outlawed or attainted, and thereby coming

the king, as he might against the party. Cro. Eliz. 85., and Roll. Abr. Uttrarie 806. B. 6., accord with Harlymer and Holt; but Lane 23., and 4 Rep. 95. are contra; and so is the common experience at this day.

And debts upon simple contract, as well as specialty, due to the king's debtor, or to the debtor of the king's debtor, which is a debt at the third hand, may be seised, as has been stated, (r) on an extent, in aid of the king's debtor.

If A. is indebted to the king, and process goes to levy the debt, the sheriff may levy the debt upon A.'s tenants, and the payment by A.'s tenants will be a good bar against the landlord in an avowry; (s) and that the rent due from the tenant may be seized for the king's debt, seems expressly agreed by Magna Charta, "*non seisiemus terram aliquam vel redditum debitoris nisi, &c.*," c. 8., and Plowden thinks that rent arrear might be taken in exe-

(r) Ante. It has been doubted whether there was not some difference between debts and goods; viz.—that debts of the king's debtor were not bound by the teste of the extent; but it was resolved in Tanner-Arnold's case, in Scio. Hil. 8 Ann. 1709, that debts and goods stand on the same footing as to this point. But no extent can issue against the

persons owing such debts, unless they are found and seized on the inquisition, upon the first extent; and if they are bonds or specialties, they must be brought into court; otherwise the extent for them will be set aside for irregularity. Parrans v. —, Pasch, 1709.

(s) 27 H. 7. 12 H. 7. pl. 13.

cution on a "Levari Facias," sued out by the subject at common law against the lessor. (t)

But Bryan carries this point still further, and puts this case, that if a party be debtor to the king, and a writ issues to levy the debt, if the debtor has leased his land, the sheriff may distrain on the land and sell the distress, whether the lessee is indebted to the lessor or no. (u)

The king shall have debts which are due to his debtors jointly with another person. (x) In the case of the Attorney Genl. v. Knowles, 'twas found by inquisition, that B., at the time of his death, was indebted to D. P. and C. in £39. 6s. 3d. for goods sold and delivered to him by D. P. and C., and one of the vendors being debtor to the crown, the whole of £39. 6s. 3d. was seized into the king's hand, and held well. (y)

But in those days 'twas held, that partnership things entire, and which were subject to the grant or release of one of the parties, were liable to execution against any one of the copartners. However, Holt and Pollexfen, chief justices, afterwards determined the contrary, and that in the case of a subject's execution, the goods of the parties are only liable to execution so far as the interest of the party reaches against whom execution goes; and per Salkeld, 392. pt. 1st., the sheriff

(t) Plow. Comm. 441.

(x) 19 H. 6. 47. pl. 100.

(u) 22 E. 4. 10. pl. 29. See Westmr. 2. c. 18.

(y) Pasch. 34. Car. in Scidd MSS.

must seize the whole, though he must return the other partners their share again.

If one of the obligees in a bond is outlawed, the duty being entire, is vested in the crown, and the king cannot have a partner with him. (2)

But a bill of exchange, payable to the king's debtor, and accepted by the drawee, cannot be found as a debt due from the *acceptor* to the king's debtor; because neither "debt" (a) nor an "*indebitatus assumpsit*" for money had and received, will lie by the payee against the acceptor of such a bill, and therefore 'tis not, properly speaking, a debt.

Whether such actions will lie for the *payee* against the *drawer* of a bill of exchange, seems to depend on this, whether the payee can maintain such actions against the drawer, by giving the bill of exchange in evidence.

In 1 Salk. (125.) it is stated generally, that "*indebitatus assumpsit*" lies for the payee, against the drawer of a bill of exchange; 128 (id.) Holt held, that the drawing a bill, is an actual promise to pay it: and in Lutwich, 1585, 'tis said by Treby, that upon a general "*indebitatus assumpsit*", a bill of exchange may be given in evidence to support the declaration; and Powell says, that upon an "*indeb. ass.*" for money received, to plaintiff's

(2) Bro. Joint-ten. 34, 39. (a) Hardr. 495. 1 Mod. Obligat. 50. Forfeiture, 16. Flo. 235. 1 Vent. 152. 259, 243, 323.

use, such bill of exchange may be left to a jury to determine whether 'twas given for value received or no.

But in *Skinner* (346.) it is laid down, that "indebitatus assumpsit" will only lie against the drawer of a bill, importing to have been given for value received; (b) and in 12 Mod. (37.) *Lutwich* (1594.) it is asserted generally, that "indebitatus assumpsit" will not lie against the drawer of a bill, but only a special action on the custom of merchants.

Upon the whole the authorities seem to weigh in favour of the position, that "indebitatus assumpsit" will lie for the payee against the drawer of a bill of exchange. (c)

(b) See also 12 Mod. 345.

(c) The principle that the drawer of a bill is in all cases liable to a bonâ fide holder, is not impeached, by the drawer's having been concerned for the crown when he drew the bill. A., receiver in the country, pays crown money to B., desiring him to forward it to London to the king's use. B. draws a bill of exchange for the amount on C., payable to D., (who was, in fact, no more than a trustee for A.) D. endorses the bill over to E., for valuable consideration, who

on the refusal of C., the acceptor brings an action against B. the drawer. B. pleads an extent against himself in aid of A., for the amount of the money he had received from A. Plea held bad on demurrer.—*Cramlington v. Evans and Price*, 2 Vent. 226. 11 Sh. 4. An executor cannot retain, to satisfy his own bond debt, before the king's simple contract debt. *Attorney General v. Burnett* H.R. 1681 in Scote, but the case implies that notice of the crown debt was given.

But surely this will not extend to an *indorsee*; for an indorsee at common law is nothing but an assignee; and as, at common law, a debt is not assignable, if an indorsee has any right to this debt, he must be beholden to custom for it, and must therefore ground his action on the custom; and so the same may be said of him as a plaintiff as is said of an *acceptor* defendant, viz. that as an acceptance creates not a debt properly so called, so indorsement transfers not a debt, but custom only supports the demand.

If this be so, it seems that a bill of exchange, in the hands of an indorsee, is not such a debt from the drawer, or indorser of the bill, as might be seized in aid of the indorsee.

It has been decided, that "debt" lies for the *payee* against the *maker* of a promissory note, (a) expressing on the face of it a sufficient consideration. But with respect to actions brought by the *indorsee* against the maker or indorser, it seems that the same sort of argument will hold good, as that which has been applied to bills of exchange; viz. that the statute only supports a demand, though in reality the indorsement neither creates nor transfers any actual debt. If so, neither "debt" nor "*indebitatus assumpsit*" can lie between such parties, but only a special action grounded on the statute; and it is conceived that this does not constitute such an actual debt as can be seized in the

(a) 2 Bos. and Pul. 76.

hands of maker or indorser, on an extent in aid of the indorsee.

Upon the same principle (that none but actual and ascertained debts shall be taken on an extent) it seems that no sum which lies in account, or which is paid to one person for another, where there is an account current between them not stated or determined, shall be found or taken as a debt. (e)

It has lately been decided, that a payment to be made at a future day, "*debitum in præsentì solvendum in futuro*," although secured by bond, cannot be seized on an extent, as an actual debt. (f)

(e) Attorney General pro Sir Wm. Pole v. Glanville, Hil. 1686. MSS.
(f) Hughes's Report of the King v. Bebb and others.

CHAPTER V.

Of the manner in which Judicial Writs are executed.

1. Of the sheriff and his office.

2. Extent.

3. "Ca. Sa."

4. "Elegit."

5. "Fi. Fa."

6. "Habere facias possessionem," or "Seisinam."

1.—**BY** the ancient law of this land all writs, (except as to some few particular jurisdictions) are directed to the sheriff of the county where the cause of suit arose ; and cannot be directed to any other person, unless it be in special cases, where there is good cause of exception against the sheriff, —and there the writ shall be directed to the coroner, who then standeth in the place of the sheriff: as where it is alleged that the sheriff is of kin to any party in the writ ; (a) or where the sheriff is himself a party to the suit, whether plaintiff or defendant : (b) also in some cases where the sheriff maketh default of serving process ; (c) or

(a) Dy. 188. Bro. Chall. 78. cess, 60. 106. 118. 140. 9.

(b) Keilw. 96. Bro. pro- (c) Fitz. process, 48.

where partiality is found in the sheriff in returning the army ; and thereupon the jury is quashed. (d)

The office of a sheriff consisteth chiefly in the execution and serving of writs ; and to do this he is the immediate officer of the king, and of all his courts ; and he is sworn, that he shall truly do this, and he must do it without favour, dread, or corruption.

Now for that, the sheriff having all writs and process directed to him, and yet it being a thing impossible for him to execute them all himself, he, or his undersheriff, to whom such writs are usually delivered, are to make out their warrants to their bailiffs, or other officers, for the execution of such writs : and these warrants are to be made according to the several natures of the writs, which, for the substance, will direct them therein.

And yet the sheriff *may* execute them himself ; or he may command his undersheriff, bailiff, or other *sworn* or *known* officer, to serve or execute them ; and such command of the sheriff, by word only, is good, without any precept in writing. (e)

Or, it seems, he may command his servant, or any stranger, as *servant* to the sheriff, by word only, without any precept in writing, to serve or execute such writ or process ; and it shall be good. (f) But if the sheriff will command any other

(d) Dy. 182. Co. Litt. 138.

(f) Ibid.

(e) 1 Keilw. 96.

man, not being a sworn or known officer, or servant, so to do, he must deliver to him the writ itself, or else a precept in writing; otherwise, an action will lie. (g)

If the writ or process cometh to the undersheriff's hands, he must either execute it himself, or make a warrant in writing, in the high sheriff's name, to the bailiffs and such officers; or he may make such warrant to any stranger. (h)

Where favour is alleged in the undersheriff, (as where he is of kin to the parties in the suit, or himself a party,) the writ shall be directed to the high sheriff, with this clause, "that the undersheriff meddle not." (i)

The bailiff or other officer to whom any warrant shall be directed and delivered, ought with all speed to execute the same; but such bailiff, or other officer, must execute it himself, and cannot command any other to do it without him. (k) And so it seems, if the high sheriff direct his warrant to his undersheriff, the undersheriff must execute it himself.

But the sheriff, undersheriff's bailiff, or other such officer, may (if need be) take "posse comitatus," sc. what number of other persons they shall think good, to assist them in the execution

(g) Lambert, 91. 21 H.

(i) Bro. process, 155.

7. 23.

(k) Lamb. 91.

(h) Dal. 103.

of such writ : and note, that where a warrant is directed to two men jointly, to do execution, it is made to them "conjunctim et divisim," and either of them alone may do it. (l) So, when process goeth to the sheriffs of London or York, (there being two,) one of them may execute it; but it must be returned in the names of both, even though one be dead. (m)

The sheriff or his officers are not to dispute the authority of the court from which they shall receive any writ, process, or other warrant; but, at their peril, are truly to execute the same, and are justified by the command of the court, though that command was erroneous. But this must be understood where the court hath jurisdiction of the cause; for, if the court hath *not* such jurisdiction, there all the proceedings are "*coram non judice*," and an action will lie against the officer, without any regard had of the precept or process of such court. (n)

And where the court *has* proper jurisdiction, as the *parties* to a judgment or writ that has been set aside for *irregularity*, cannot justify under it, the sheriff or officer must take care not to join in the same plea with them, or he will lose the benefit of his defence; and he must take care to shew the return of the writ, where he justifies under a returnable process. (o)

(l) Co. Litt. 181. Lamb. 91.

(n) Dal. 106.

(m) Bro. officer, 22. 4 Rep.

(o) Tidd, 1007, 8.

In strictness, the money made under a writ is to be brought into court; but a return of payment over to the party is good by permission of the court, though not by force of law. (p)

For executing a writ of "Fi. Fa." or "Ca. Sa." the sheriff is entitled (by 29 Eliz. c. 4.) to twelve-pence for every 20s. when the sum does not exceed 100l.; and sixpence for every 20s. above that sum, that he shall levy, or take the body in execution for: this, which is termed the sheriff's poundage, is not (under 3 Geo. 1. c. 15. s. 17.) to be taken on a "Ca. Sa." for any sum greater than the debt *bonâ fide* due, and marked on the back of the writ; and, by the same statute, the sheriff is entitled, on a writ of "Elegit," or "*habeas facias seisinam*," or "*possessionem*," to have poundage—twelve-pence for every 20s. of the yearly value of the land whereof possession is given, where the whole exceeds not the value of 100l. per annum, and sixpence for every 20s. per annum above that sum.

If the sheriff levy under a "Fi. Fa." he is entitled to poundage, though the parties compromise before he sells any of the defendant's goods; (q) or though the execution be afterwards set aside for irregularity; (r) and he is entitled thereto on a "Ca. Sa.," though the defendant go to prison

(p) 3 Lev. 203, 4.

(q) 5 T. R. 470.

(r) 6 Esp. Cas. Ni. Pri.

without satisfying the plaintiff. (r) So, if the sheriff, having taken the defendant on one writ, detain him on another, he is entitled to poundage on both; (t) but not on executing a writ of attachment for non-payment of money.

The sheriff may bring an action of debt on the statute for the poundage he is entitled to, or he may retain it out of the sum levied. (u) If he take more than he is entitled to, he is liable to an action for treble damages at the suit of the party grieved, (x) and shall forfeit 40*l.* to the king and the informer. (y)

Since the 43*d* of Geo. 3. c. 46. s. 5. the party grieved is, in most cases, the person on whom the execution was levied; for, by that statute, the poundage may be levied of the defendant, over and above the debt and damages and the expenses of execution. In the case of execution for costs, issued on behalf of the defendant, the sheriff does not appear, by the letter of this latter statute, to be authorized so to levy the poundage.

2. The method of executing the different writs of execution will be most clearly shown by pursuing the order in which the powers and objects of each particular writ have already been stated. (z)

(r) 4 Burr. 1981, civil suit. (2 Maule and Selwyn, 297.)
(t) Tidd, 1032.

(u) 1 Salk. 209. No poundage is allowed on executing a "capias utlagatum," even in a
(x) 2 T. R. 148.
(y) 29-Eliz. c. 4.
(z) Chap. 1.

First, then, of an extent at the suit of the crown—"Ab Jove principium."

The king's specialty debts, (a) and those due to him from certain of his accomptants, (b) are, we may recollect, to all intents and purposes, to have the same nature, force, and effect, as a statute-staple.

The conusee of a statute-staple was entitled without further process to have execution for his debt, as soon as the sum mentioned in the statute-staple became payable; or he might, if he pleased, bring an action of debt.

To the immediate execution he was entitled, as well by statutory provision, as by the analogy which a statute-staple, like a recognizance, or any other obligation of record, bears to a judgment; inasmuch as *admitting*, and with the same degree of solemnity, what a judgment would have *ascertained*.

It is for these reasons that the king's extent may issue without any intermediate process, (c) for the recovery of his specialty debts, and those due from certain his accomptants.

However, the ordinary method (where no affidavit has been made that the debt is in danger) is to proceed first by a writ of "Scire Facias," that the party chargeable may not be taken by sur-

(a) 33 H. 8. c. 39.

(c) Tidd, 1015.

(b) 13 Eliz. c. 4.

prise; but if such affidavit be made, even after the "Sci. Fa." sued out, an immediate extent may issue. Against sureties it is always usual to proceed by "Sci. Fa." (*d*)

When the king's debt is due by simple contract, a commission issues out of the Court of Exchequer; upon which an inquisition is taken, in order to ascertain the debt; and, upon an affidavit being made that the debt is in danger, the court or a baron will grant a warrant or "Fiat," for an immediate extent. (*e*)

So, if it be found, by inquisition against a receiver-general, that he has paid money over to A., an immediate extent may issue against A.; for this is the king's money. (*f*)

The ordinary mode of proceeding also for debts due to the king's debtor, is by "Sci. Fa.;" and, where the debts are small, the court may order a receiver to collect them, and pay them to the deputy remembrancer. (*g*) But if, on an extent against the king's debtor, the inquisition find that B. is indebted to him, on return of the inquisition and affidavit made, that the money in B.'s hands is in danger, an immediate extent shall issue against B., (*h*) even though there be reason to suppose that the king's debtor became so with intent to strip the rest of B.'s creditors.

(*d*) Tidd, 1015.

(*g*) Id. 293.

(*e*) Tidd, 1016.

(*h*) Id. 24.

(*f*) Bunb. 128.

By virtue of the statute 33 H. 8. c. 39., the king's extent is to be of the same power and effect, and, as far as circumstances will permit, executed in the same manner as an extent on a statute-staple: we will therefore first examine the manner in which an extent on a statute-staple was executed.

If the conusor of a statute-staple failed to pay his debt on the day mentioned in that instrument, the conusee, as we have seen, (i) brought his obligation to the mayor or other officer before whom it was acknowledged; and on the conusee's representation that the debt was unpaid, such mayor or officer incontinently caused the goods of the conusor, to the amount of the debt, to be sold, or if there were no buyers, to be delivered to the creditor by the appraisement of honest men; and the body of the conusor, if lay, might be committed to prison till he agreed the debt.

But if the conusor could not be found within the staple, nor his goods to the value of the debt, the mayor or other officer certified those facts under his seal into the petty-bag office in Chancery. (k)

Upon that certificate, (l) say the books, a writ of execution returnable in the petty-bag office in Chancery, shall presently go forth against the

(i) See ante.

(l) Id. 123.

(k) Dal. Sh. 120.

body, (si laicus) and against the lands and goods of the conusor; and upon that writ of execution the sheriff shall take the body of the conusor, and shall also (per sacramentum proborum et legalium hominum, et juxtà verum valorem) presently extend and prise, and shall seize into the king's hands his lands, goods, and chattels, and that extent and prisement, or valuation of the lands and goods, shall return and certify into the Chancery as afore-said; and thereupon the conusee shall have another writ, called a "liberate," directed to the sheriff out of Chancery, to deliver to the conusee those lands and goods to the value of the debt; and upon that "liberate" delivered to the sheriff, such lands and goods as are taken in execution, shall, without any other inquisition, and according to the former extent and valuation, be delivered to the conusee by the sheriff, and not before.

The manner of executing the king's extent seems to be this: if the debt be a specialty debt, it is stated at the beginning of the writ directed to the sheriff, that the debtor is by bond or record indebted to the king, and the sheriff is thereupon commanded to take the body of the debtor, and imprison him till the debt be satisfied, to enquire by the oath of good and lawful men what lands and tenements, and of what yearly values, and also what goods and chattels, and of what sorts and values, and what debts, credits, and specialties, the debtor or any other persons in trust for him, have; and to cause all the said goods and chattels, lands and

tenements, debts, credits, specialties, and sums of money, to be carefully appraised and extended, and to be taken and seized into the king's hands, there to be retained until the debt be satisfied.

The commencement of an extent for debts of a degree inferior to specialty debts, is by the issuing of a commission empowering certain persons to ascertain, by inquisition on oath, the existence of such debts; and the extent directed to the sheriff states, that such inquisition has so found them; he is then directed to proceed, as above.

Where an extent against the king's debtor is only issued *pro formâ*, that an "extent in aid" for the recovery of debts due to the king's debtor, may be grounded on it, it is usual to command the sheriff only to enquire by oath of good men, what debts, credits, specialties, and sums of money, are due to the king's debtor, to appraise them, and seize them into the king's hands.

The debtor's property under the writ of extent being at once seised into the king's hands, it is obvious that the writ of "liberate," sued for the purpose of giving the subject possession in an extent on a statute-staple, cannot be necessary in an extent at the king's suit.

Whatever proceedings are had on the writ must be accurately returned by the sheriff; and with respect to the return of judicial writs in general, we may here observe, that all writs of execution to be executed by the *sole* authority of the sheriff, such as a "Ca. Sa.," "*Habere facias possessionem*

nem," &c. are good when duly executed, though never returned by the sheriff; for the plaintiff has the effect of his writ. (m) But if a party apprehends himself injured he may apply to the sheriff to return such writ; and if the sheriff refuse, an action on the case lies against him. (n)

The manner of finding an inquisition will be shewn at large under the head of *Elegit*.

The extent, which after judgment in an action of debt against the heir on his ancestor's bond, issues against lands which the heir has by descent from such ancestor, is executed by the sheriff's ascertaining, under an inquisition on the oath of honest men, what lands and tenements the ancestor having possessed in fee simple at the time of his death, came to the heir by hereditary right, and were possessed by him at the time of the writ issuing against him;—how much the said lands and tenements are worth beyond all issues and reprises;—and after such inquisition and finding, by delivering them, on a writ of "liberate" being sued out, to the plaintiff, to hold to him and his assigns, as his freehold, until his debt and damages be thence levied.

The "Liberate" does not confer actual but only legal possession; and in order to gain actual possession the plaintiff must, if there be any opposition, bring an ejectment.

3.—The "*Capias ad Satisfaciendum*," is exe-

(m) 4 Rep. 67. 5 Rep. 90.

(n) Keb. 551.

cuted by the sheriff or his officer taking into custody the defendant's person.

As to what shall be considered such taking, it has been resolved, that if a bailiff, or other person authorized by the sheriff's warrant, put his hand upon, (o) or only touches (p) the party, saying that he arrests him, it shall be a sufficient arrest, without shewing the warrant, and without saying at whose suit he arrests him, if the party does not ask. (q)

So, if the bailiff gives the warrant to his servant, who, by his command and in his presence, or while the bailiff waits at the door, puts his hand upon the party, saying, I arrest you. (r)

But if the party require it, the bailiff or other authorized officer ought to shew the warrant, and tell at whose suit, for what cause, by what process, and in what court returnable, the arrest is made; otherwise it will be wrongful. (s) And words only do not make an arrest; therefore, if a bailiff says, I arrest, but does not touch the party, (though he be beat off by a sword or other weapon) it is no arrest. (t)

When a party is arrested upon a "Ca. Sa." he is immediately in execution, before the return of the writ; (u) and therefore if the defendant be in

(o) 9 Rep. 69. a.

(p) 1 Salk. 79.

(q) 9 Rep. 69. a.

(r) Mod. Ca. 211. dub.

Holt. Com. Dig. Exec. C. 12.

(s) 6 Rep. 54. 9 Rep.

69. a.

(t) 1 Salk. 79.

(u) 1 Roll. 201. l. 30.

the custody of the sheriff, and another writ of "Ca. Sa." against him is delivered to the sheriff, he shall be in execution immediately upon the second writ, without actual arrest. (x) So, if he be arrested, and in custody of the sheriff upon mesne process, and afterwards a "Capias utlagatum" be delivered to the sheriff, the party shall be in custody upon the "Capias utlagatum," without an actual arrest; and if he escape the declaration shall say he was arrested. (y)

The sheriff or his officer cannot break a house to execute a "Ca. Sa.," (z) neither may he open the door though it be only latched; or knock, and when the door is a little opened, thrust in with violence: (a) but he may enter the house, even of another person, where the party is, if the door be open, (b) though it be six o'clock at night; (c) or arrest a party through the window if the window be open; but if the party arrested escapes into a house, or being arrested at a window, escapes, the officer may break the house to take him. (d)

And where several families or individuals lodge in the different floors of one house which has but one street door, though the bailiff cannot break the street door, yet, if that be open, he may enter and break any other; (e) for this privilege of doors is,

(x) 5 Rep. 89.

(y) Ibid.

(z) 5 Rep. 92.

(a) Hob. 62.

(b) 5 Rep. 92. a.

(c) 2 Cro. 486. Com. Dig. Exec. C. 12.

(d) Pal. 53. 2 Roll. 138.

(e) Whenever the process is at the suit of the king, the

for obvious reasons, attached to *houses*, and not to the *persons* of parties concealing themselves from justice; (*f*) however, if the bailiff, on information that his prisoner has fled into any house, break open the door, or any chest within the house, he takes it upon him to do so at his peril; (*g*) for if the prisoner be not there, he is guilty of a trespass.

The bailiff may not beat, strike, or assault a party in the taking; but if a party be taken and then fly, and draweth any weapon, the officer may justify to assault, batter, and take him again. (*h*)

By the 29th Car. 2. c. 7. a "Ca. Sa." shall not, nor shall any other writ or process be executed on a Sunday. (*i*)

The common returns to a writ of "Ca. Sa." are, that the sheriff has taken the defendant, whose body he has ready; or, that the defendant is not found in his bailiwick; or, the sheriff may return that the defendant has become bankrupt, and obtained his certificate, and therefore he forbore to take him. (*k*)

sheriff or his officer may, after request to have the door opened, and refusal, break and enter the house. 5 Rep. 91. b.

(*f*) Cowper, 1.

(*g*) 2 Roll. 564. l. 15.

(*h*) Dal. 111.

(*i*) The service of process

on a Sunday being absolutely void by the statute, cannot be made good by any subsequent waiver of the defendant; as by his not objecting until after a rule to plead given. 3 East, 155. 8 East, 547. b.

(*k*) Tidd, 1027.

3. A.—Of charging a Prisoner already in custody.

Where a defendant is already in custody, the plaintiff, in order to charge him further, must, in the King's Bench, after the judgment roll docketted and filed, sue out a "Ca. Sa.," directed to the sheriff of the county, in whose custody he is, if the venue be laid in that county; if not, a "Ca. Sa." into the county where the venue is laid, and "testatum Ca. Sa." to the sheriff of the county where he is a prisoner. This writ he must send to the sheriff, with directions to charge the defendant in custody. If the defendant be detained in the King's Bench prison, a rule should be obtained from the clerk of the rules, for the marshal to acknowledge him in his custody. The marshal being served with a copy of the rule, will write his acknowledgement at the bottom of it, which ought to be of the same term in which the defendant is charged in execution: a "committitur piece" should then be drawn up on unstamped parchment, and filed with the clerk of the judgments, in order that he may enter it on record: and it is usual, before this is done, to enter the "committitur" in the marshal's book, kept at the King's Bench office. The committitur, on every judgment, must be filed with the clerk of the docquets, on or before the last

day of the term in which the prisoner is charged in execution; and the said clerk must enter the committitur on the judgment roll within four days of the end of such term, or five, if the fourth be a Sunday; and in default thereof, the prisoner shall be entitled to be discharged. (1) This rule does not extend to the case of a prisoner committed under a "habeas corpus."

If the defendant be removed, after declaration, to the Fleet, or found in the prison of an inferior court, the mode of charging him in execution in the King's Bench, is, by a writ of "habeas corpus ad satisfaciendum," returnable in that court, on a day certain in term; and the number of the judgment roll must be endorsed on the "habeas corpus." The prisoner is not bound to give notice of his removal, but the plaintiff must take notice of it at his peril. (m)

In order to charge the defendant in execution in the Common Pleas, the judgment roll being docketted and filed, a "habeas corpus ad satisfaciendum" must be sued out, directed to the warden of the Fleet, and returnable in court on a day certain. The number roll of the judgment should be indorsed on this writ, and the writ being signed by the prothonotaries, allowed by a judge, and sealed, should be taken to the clerk of the papers of the Fleet prison, four days before the return; upon

(1) Tidd, 427.

(m) Id. 428.

which, the defendant being brought into court with the judgment roll, the court will charge him in execution at the plaintiff's suit.

If there are several judgments, there must be a "habeas corpus ad satisfaciendum" in each suit.

When the defendant is charged in execution by any of these means, the execution is executed; so that if the plaintiff die afterwards, his executors need not revive the judgment by "Sci. Fa.," or charge the defendant de novo. Note—a person voluntarily within the walls of a prison, cannot be arrested by a creditor in the ordinary manner, but a detainer must be lodged against him. (n)

4. When an "Elegit" has been prayed, the sheriff must impanel a jury of twelve men, who shall make enquiry, on oath, of all the goods and chattels of the debtor, and appraise the same, and also enquire as to his lands and tenements; and on such inquisition the sheriff may deliver all the goods and chattels, (except beasts of the plough,) and a moiety of all the lands which the defendant or conusor was seized of at the time of the judgment or recognizance, or after. (o) So, that if the defendant has aliened after judgment, a moiety of his land may be taken in the hand of the purchaser. (o)

But if it appears to the sheriff, that there are goods and chattels of the debtor, sufficient to satis-

(n) 3 T. R. 392.

2nd. c. 18.

(o) Co. Litt. 289. b. Westm.

fy the debt, he ought not to extend the land. (p) We may observe, however, that an "Elegit," when goods are taken under it, does not affect them in the same manner as a "Fi. Fa.;" for under a "Fi. Fa.," the goods, if there are buyers, must be sold by the sheriff; but under an "Elegit," they are appraised by a jury, and may be delivered to the party that sued forth execution; (q) and so, if in the latter case, judgment be reversed, the defendant may be restored to a term or goods in specie, and not to the value, as where goods have been sold under a "Fi. Fa." (r)

The inquisition ought to shew the place and county where the inquisition was taken and the lands lie; (s) to find the lands with certainty; for to find no certain estate will be insufficient; (t) and if the defendant be joint-tenant, or tenant in common, to mention it specially. (u)

After the inquisition, the sheriff must deliver a moiety, but the jury need not divide it; (x) and the sheriff is not bound to deliver a moiety of each particular tenement and farm, but only certain tenements, &c. making in *value*, a moiety of the whole. (y) But he ought to deliver the lands, described with certainty; (it is not sufficient to say

(p) 2 Inst. 395.

Exec. c. 14.

(q) 1 Ld. Raymd. 346. Bac.

(t) Moor, 8. pl. 28.

Abr. Exec. c. 2.

(u) Hut. 16. 1 Brownl. 38.

(r) Cro. Jac. 246. 2 Wms.

(x) Cro. Car. 319.

Saund. 69.

(y) Doug. 473. 2 Salk. 563.

(s) Dy. 208. b. Com. Dig. Bro. Elegit, 14.

he delivered a moiety;) described by bounds, (z) distinctly; (a) but it need not be by metes. (b) And if the parcels delivered by the sheriff amount to more than a moiety, the inquisition is void; (c) (according to *Carthew, Pullen v. Pirbeck*, voidable only, by error, or an *auditâ querelâ*;) and in an ejectment upon it, (d) advantage may be taken of this nullity.

If two plaintiffs recover severally against one defendant, and the one plaintiff has a moiety of the defendant's land delivered to him on an "*Elegit*," the other plaintiff, on his subsequent "*Elegit*," can have but a moiety of the moiety that remains. (e) However, if A. acknowledges two judgments to B., and B. takes out on them, two "*Elegits*" in the same term, on the one "*Elegit*" B. shall have a moiety of A.'s lands, and on the other the other moiety, and is not restrained to a moiety of the moiety; (f) for in judgment of law the whole term is but one day. (f)

The sheriff must make an accurate return to this writ, of all that he has done on it, in order that the inquisition may be recorded in that court out of which the writ issued; but if there are no lands, the sheriff need not take or return an inquisition. (g)

(z) *Hut.* 16.(d) 2 *Salk.* 564.(a) *Brownl.* 38.(e) *Cro. Eliz.* 482. 2 *Brownl.*(b) *Dal.* 26.

97.

(c) 1 *Ld. Raymd.* 718. 1
Sid. 91.(f) *Hardr.* 23. *Ante.*(g) 2 *Stra.* 874.

The delivery of land under an "Elegit," does not confer actual, but only legal possession; and in order to obtain actual possession, the plaintiff must proceed by ejectment, (A) in which he must produce a copy of the judgment of the writ of "Elegit," and of the inquisition and return. (i)

The word "price," in the statute, refers to goods and chattels, and "extent," to lands. Whenever lands are *extended* the plaintiff is accountable for all the profits he receives, 'till his debt is satisfied. But a term for years may be either *extended*, that is, a moiety thereof may be delivered to the plaintiff; or appraised, like any other chattel, at a gross price, by the jury.

It seems, that where a term is appraised and sold at a gross sum, it is a sufficient finding by the inquisition, that the debtor is possessed of lands "for a term of divers years yet to come." (k) But when the moiety of a term is extended, at an annual value, so general a finding may perhaps be insufficient, (l) and the jury ought to find the commencement and conclusion of the term. (m) However, if the sheriff sell a term, either under an "Elegit" or "Fi. Fa.," and *misrecites* it in date or time of duration, or the jury mistake it on an Elegit, the sale is void; unless he also sells all the

(h) 3 T. R. 295.

(i) But see Lane, 50, 51.

(j) Bull. Ni. Pri. 104.

(m) 4 Rep. 74. Dal. 139.

(k) Cro. Eliz. 584. 3 Leon, 204. Gilb. Exec. 35. But see 2 Wms. Saund. 68. f.

interest which the defendant has in the land ; for then it is good, notwithstanding the misrecital.

Hence, it appears, that to avoid all difficulties and niceties on this subject, it is much more advisable to sue out a "Fi. Fa." against the debtor's goods, and if they are insufficient to satisfy the debt, then to take out an "Elegit" against his land for the remainder of the debt. If the defendant tenders the money at the time of the *appraisement*, and before the actual delivery of the term, or even afterwards, in court, the term is saved. (n)

Tenant by "Elegit" hath but a chattel, which shall go to his executors; yet he shall hold it "ut liberum tenementum." (o)

No notice is given of executing an "Elegit." (p)

5.—The sheriff, on a "Fieri Facias" being delivered to him, may enter the house of the defendant, when the door is open, and seize the goods of the defendant there found ; (q) or the house of a stranger ; and this, by night or by day, if the door be open. (r) But if it be the house of a stranger, the sheriff ought to aver that the goods are there. (s) But he cannot break open the outer door of a dwelling-house to make execution on goods, (t) nor can he open the door though it be only latched ; or knock, and when the door is a little opened thrust

(n) Moor, 873. Gilb. Exec.
34. 2 Wms. Saund. 68. f.

(o) 2 Inst. 396.

(p) Tidd, 1012.

(q) 5 Rep. 92. a.

(r) Ibid.

(s) Latw. 1434.

(t) 5 Rep. 92.

in with violence. (u) However, if the outer door be open and the sheriff enters, he may afterwards break an inner door or trunk to take the goods. (x) An out-house or barn standing separate from the dwelling-house, may be broken open. (y) And if the defendant's goods are borne into the house of another, to avoid execution, the sheriff may break the door to obtain them; (z) but he does this at his peril that the goods are there; and if the party imprisons the bailiffs, the sheriff may break the house to deliver them. (a) Goods may be taken through the windows, if open; (b) and a seizure of part of the goods in a house, in the name of the whole, is a good seizure of all. (c) But the absolute property of the goods to be taken, must be in the debtor; and therefore, if the sheriff take the goods of a stranger, though the plaintiff assures him they are the defendant's, he is a trespasser; for he is obliged at his peril to take notice whose the goods are, (d) and where he is in doubt may impanel a jury to enquire in whom the property of the goods is vested. (e) The inquisition of this jury shall not be set aside, shall excuse him in an action of trespass, (f) or justify the return of "nulla bona."

(u) Hob. 62.

(b) 1 Rol. Abr. 671.

(x) Pal. 54. 2 Show. 87.

(c) 1 Ld. Raymd. 725.

(y) Keb. 698.

(d) 4 T. R. 633.

(z) 5 Rep. 93. a.

(e) 6 T. R. 88. 7 T. R.

(a) 2 Cro. 556. Pal. 53. 177. 4 T. R. 633. 648.

2 Rol. 137.

(f) Dal. 146. 6 T. R. 88.

The goods of a bankrupt are absolutely vested in his assignees, (except as against the king's execution) (*g*) from the time of the act of bankruptcy; and though the defendant become bankrupt after the writ of execution delivered, which in other cases binds the goods; yet, as they immediately vest in the assignees notwithstanding the delivery of such writ, the sheriff may not sell them. But the sheriff is excused if he have no notice; and if he sell them after notice in such case, he must be sued in *Trover*, not *Trespass*. (*h*)

The sheriff is warranted in seizing goods which have been fraudulently sold or conveyed away; for such sale is void as against creditors; (*i*) and a principal badge of fraud is the defendant's continuing in possession. (*k*)

So, he is warranted in seizing goods, where another creditor having seized them under a prior "*Fi. Fa.*" has suffered them to remain long in the debtor's hands, such delay being evidence of fraud in the first creditor, and rendering the goods in the debtor's hands liable. (*l*)

But this proceeding is not conclusive, for inquests of office are always traversable; therefore an inquest found in favour of A., by the sheriff's jury, is not admissible evidence in an action of "*trover*" for the goods, brought by A. against the sheriff. 2 H. B. 437.

(*g*) See ante.

(*h*) 1 Burr. 20. 1 T. R. 475. Ante.

(*i*) Prec. in Chan. 286, 7.

(*k*) Gilb. Exec. 15. 3 Rep. 81. 8 T. R. 521. But see 2 Bos. and Pul. 59.

(*l*) Prec. Chan. 286. 1 Vez. 245. 1 Wils. 44. and, there-

So, where a prior creditor has long delayed to execute a sequestration issued out of Chancery. (*m*)

Where there are two partners, the sheriff must seize all their joint property, because the moieties are undivided; for if he seize but a moiety and sell that, the other will have a right to the moiety of that moiety: but he must seize the whole, and sell a moiety thereof, undivided; and the vendee will be tenant in common with the other partner: (*n*) of course the interest of the other partner remains; so that the sheriff could not return "nulla bona" to an execution against the other partner, (*o*) nor sell the whole property under an execution against one partner, without being liable to an action of Trover, at the suit of the other. (*p*)

The court will not, at the request of the partnership creditors, give the sheriff time to return the writ, until an account can be taken of the several claims upon the partnership property; nor will they refer it to the prothonotary to enquire what was the defendant's interest in the effects seized. (*q*)

But the court will not countenance a hasty or

fore, execution of a Fi. Fa. by leaving it in a drawer on defendant's premises, will not avail against a subsequent execution. 1 Maule and Sel. 711.

(*m*) 4 East, 523.

(*n*) 1 Salk. 392. 1 East, 367.

(*o*) 1 Show. 169.

(*p*) Ibid.

(*q*) 3 Bos. and Pull. 288. 254. This latter, a very strong case. The partners sued, resided abroad; were much indebted to the partner in England, who had paid for all the property.

unreasonable levy ; (r) and upon the application of the sheriff, the court enlarged the time for his making a return to a “ Fi. Fa.,” upon suggestion of a reasonable doubt, whether the goods seized under the writ were not covered by an extent issued at the suit of the crown. (s)

If a sheriff levy, after the issuing, but before the allowance of a writ of error, he must proceed to sell the goods ; (t) for an execution once regularly begun, must be completed ; and the death of either plaintiff or defendant, after the delivery of the writ, does not affect the proceedings. (u) But a writ of error, with the requisite bail allowed, and notice given to the sheriff before the actual sale of the goods, is a supersedeas to the execution.

When two writs of “ Fi. Fa.” are delivered to the sheriff, he must first execute that which was delivered first ; and if he first execute that which was delivered last, he will be liable to the party which delivered the first ; (x) but for the furtherance of justice, which would obviously be impeded if any thing done under writs of execution were allowed to be invalidated, purchasers under the second writ, so wrongfully executed, are safe ; (y) and also a party who has taken a bill of sale under it from the sheriff. (z)

(r) *Lofft*, 52.(x) 1 *Wils.* 44.(s) 1 *Taunt.* 120.(y) 1 *Ld. Raymd.* 251. 1(t) *Willes*, 280.*T. R.* 729.(u) *Willes*, 135. 2 *Ld.*
Raymd. 1072.(z) 1 *T. R.* 731. 4 *East*,
523.

When the sheriff has taken goods in execution under a "Fi. Fa.," he may sell them without other direction, though his office be determined before the sale; (a) and in selling a term for years, it is sufficient to recite that the party was possessed of a term of divers years yet to come, without shewing the commencement or end of the term; and even where he mentions the date of the term, and mistakes it, if the bill of sale has general words, viz. all the defendant's interest," it is sufficient. (b) But if the sheriff undertakes to recite the date of the term, and mistakes it, omitting also the general words, the sale is void. (c) However, a sale by the sheriff continues good, though the judgment be afterwards reversed, (d) and the money only shall be restored, (e) if the sale was to a stranger. (f)

Observe, that on the sale of a term the sheriff cannot put the party out of possession by force, and the vendee in; but if the party resists, the vendee must bring his ejectment. (g)

It must be noted too, that the sheriff cannot deliver the defendant's goods to the plaintiff in satisfaction of his debt, but the goods must be sold. (h)

Nor can he re-deliver them to the defendant, if he pays only a part of the debt; or detain them till

(a) Com. Dig. Exec. c. 6.
1 Roll. 893. l. 50.
(b) 4 Rep. 74. a.
(c) Ibid.
(d) 5 Rep. 90. b.

(e) Dy. 363. a.
(f) Yel. 180.
(g) 3 T. R. 292.
(h) Cro. Eliz. 504.

the money be levied, and also the charge of keeping them, paid; for though the sheriff may make immediate sale, and the keeping is in favour of the defendant, for which he ought to make amends, yet this should be by agreement, and not by detainer till satisfaction: (i) and it is said, that if the sheriff on a "Fi. Fa." levies the goods and pays the plaintiff with his own proper money, yet he cannot keep the goods to his own use, for the authority by which he acted was to sell the goods. (k) But it is holden, that the goods may be sold to the plaintiff suing out the writ, though not delivered to him without sale; and the practice by which a bill of sale of the debtor's goods is made to the plaintiff, has been long admitted, and seems now established. (l)

The plaintiff (by 43d Geo. 3. c. 46. s. 5.) may levy the sheriff's poundage, fees, and expences of the execution, over and above the sum recovered by the judgment; and by the 29th Eliz. c. 4. nothing but the poundage shall be taken by the sheriff for levying execution.

Kensington Palace being kept in a constant state of preparation to receive the king, with his officers, servants, and guards, residing and doing duty there at all times, is privileged as a royal palace against the intrusion of the sheriff for the purpose of exe-

(i) Com. Dig. Exec. C. 5.

(l) 1 Ld. Raymd. 251.

(k) Noy. 107.

cutting process against the goods of a person having the use of certain apartments there. (*m*)

Before the removal of goods, the sheriff should take care, if the defendant be tenant of the premises on which the goods are taken, that the landlord be satisfied whatever is due to him, not exceeding a year's rent. If the sheriff remove the goods without so satisfying the landlord, he will be liable to an action at the suit of the landlord, his executors or administrators. (*n*) But in order that such action may be maintained, notice must have been given before the removal of the goods, that rent was due. (*o*)

Such notice having been given, the landlord, instead of bringing an action, may move the court that he may be paid what is due to him, out of the money levied. (*p*)

This protection is afforded the landlord by the 8th Ann. c. 14. s. 1., which statute extends to all manner of executions for the *subject*, upon judgment for the defendant as well as plaintiff; (*q*) and the landlord is entitled to his rent without deduction of poundage: (*r*) but only the immediate and not the ground landlord is entitled; (*s*) and where there are two executions he cannot have a year's rent on each. (*t*)

(*m*) 10 East, 578.

(*n*) 1 Str. 212.

(*o*) 1 Str. 97. 214.

(*p*) Barnes, 199. 211.

(*q*) 2 Wils. 140.

(*r*) 1 Str. 643.

(*s*) 2 Str. 787.

(*t*) 2 Str. 1024.

The goods of a tenant are liable for a year's rent, notwithstanding outlawry in a civil suit. *(u)*

A commission of bankrupt is not considered an execution within this statute; and as on the one hand the landlord may distrain for rent, even after assignment and sale of the bankrupt's effects, at any time before the goods are removed off the premises; so on the other hand, if he suffer the goods to be once removed, without distraining, he must come in for his rent, *pro ratâ*, with the other creditors. *(x)*

The sheriff need not return a writ of "*Fi. Fa.*," unless called on to do so; but where all the money is not levied, the writ must be returned before a second can be executed; for that must be grounded on the first, and recite that all the money was not levied on the first writ; *(y)* and an execution cannot be continued on the roll, which was never returned and filed; so that, when a further writ is necessary, the first must always be returned.

The usual returns are, "*nulla bona*;" which is either general, that the defendant has no goods within the sheriff's bailiwick; or special, with this addition, that the defendant is a beneficed clerk, having no lay fee within the bailiwick. Secondly, "*Fieri feci*," that the sheriff has caused to be made of the defendant's goods the whole, or a part, of the money, which he has ready to be paid to the

(u) 7 T. R. 259.

(y) 1 Salk. 318.

(x) 1 Atk. 103.

plaintiff. Thirdly, that he has taken the goods to a certain amount, which remain in his hands for want of buyers;—or, fourthly, that he has made his mandate to the bailiff of a liberty, who has given him no answer, or returned “*nulla bona*,” &c. (2)

He cannot return “a rescue;” for he has it in his power to employ the “*posse comitatus* :” (a) and the levy, if made in a county different from that in which the venue was laid, must be made under a “*Testatum Fi. Fa.*”

6. The “*Habere facias possessionem*,” and “*Habere facias seisinam*,” are executed (the former for terms of years in lands or tenements, the latter for freeholds) by the sheriff’s putting the party in actual possession of lands or tenements, recovered in ejectment, or a real action.

If there be any resistance, the sheriff may raise the “*posse comitatus*” to his aid; and, where a house is recovered, the sheriff may break open the doors to deliver possession: but he ought to signify the cause of his coming, and request that the doors may be opened. (b)

The sheriff must take care not to deliver possession of more than is specified in the writ, or he will subject himself to an action; (c) and he cannot return that another is tenant of the land by right; for that will not come in issue between the demandant and him. (d)

(2) Tidd, 1001.

(c) Style, 238.

(a) 2 Roll. 57.

(d) 6 Rep. 52.

(b) 5 Rep. 91.

A sheriff delivered possession in the morning by a writ of "Hab. Fac. Pos." and, some time in the day, after the sheriff was gone, the defendant turned the plaintiff out of possession: it was held, that, if he had been turned out immediately, or whilst the sheriff and his officers were there, an attachment might be granted against the defendant; for this had been a disturbance in contempt of the execution: but it being several hours after the plaintiff was in possession, the court doubted, but agreed to grant a new "Hab. Fac. Pos."(e)

(e) 1 Salk. 321.

CHAPTER VI.

1. The plaintiff's further remedy where the first proceeding has failed to procure him satisfaction, or the sheriff has acted amiss.
2. Defendant's redress and protection in all cases of execution.

1.—**TAKING** each writ in the order hitherto pursued, let us now see what further steps may be adopted to gain satisfaction for a debt, when any writ issued has proved insufficient for that purpose. It has already been shewn in what cases the adoption of certain writs and proceedings had upon them will preclude a recourse to any other. Subject to those rules, a party is enabled, in many instances, to proceed successfully on a second writ, where the first has failed, and always to obtain redress in case of any misconduct on the part of the sheriff.

With respect to the king's extent, if the lands seized under it are of so small yearly value, that the debt will not readily be paid by the annual returns, and the goods have proved insufficient, the land may be sold outright for the discharge of the debt. (a)

(a) 13 Eliz. c. 4. s. 2.

And by 25th Geo. 3. c. 35. for the more easy and effectual sale of lands of the crown-debtors, the Court of Exchequer, on application of the attorney-general, in a summary way, may order the estate of any debtor to the king to be sold, and compel the production of title-deeds, &c.; and apply the same in liquidation of the king's demand under a writ of "Extent" or "Diem clausit extremum."

The surplus, after satisfaction of the debt and costs, to be paid to the party entitled to the estate.

On the sheriff's return of "non est inventus" to a writ of "Ca. Sa.," the plaintiff may sue out an "alias capias" into the same, or a "testatum capias" into a different county; or he may have into either a "non omittas Ca. Sa.," commanding the sheriff that he omit not by reason of any liberty in his bailiwick, but that he enter the same:—or, instead of suing out an "alias," or a "testatum," the plaintiff may, if the action was commenced by original, proceed at once to outlaw the defendant, by suing out a writ of "Exigi facias," and process of outlawry. (*b*)

Though, before issuing a "testatum," a "Ca. Sa." into the county where the venue was laid, be necessary, yet the court will not set the "testatum" aside for want of such "Ca. Sa." provided the writ appear to be properly entered on

the roll : (c) and where it was objected that the "testatum" was not warranted by the judgment, the court allowed the writ to be amended by the record. (d)

The "non omittas" may be inserted in the first writ.

Where the defendant escapes, or is rescued, the plaintiff may either bring his action against the sheriff, or sue out a new execution ; (e) and, if the defendant escape from the King's Bench or Fleet prison, the plaintiff, on application to a judge, may have an escape warrant in order to retake him, which shall be in force throughout England, (f) or bring his action against the marshal or warden.

Where a person taken on a "Ca. Sa." dies in execution, the party (or his executors, or administrators,) at whose suit he was charged, may sue out a new execution against the lands and tenements, goods and chattels, or any of them, which were of the person so deceased, provided that no lands be taken which have been sold *bonâ fide* for the payment of creditors. (g)

If any or all of the "Elegits" first issued by the plaintiff into one or more counties, be returned

(c) 5 T. R. 272.

c. 3.

(d) 6 T. R. 450. S. P. as
to a "Fi. Fa." 3 T. R. 557.

(f) 1 Ann. c. 6.

(e) 1 Roll. Abr. 904. Cro.
Car. 240. Bac. Abr. Exec.

(g) 21 Jac. 1. c. 24. 47

Geo. 3. sess. 2. c. 74.

"nihil," the plaintiff may have a "testatum Elegit" into another county; or if, on the first "Elegit," or "Elegits," lands of an insufficient value be taken, and it is afterwards discovered that the defendant has more lands, the plaintiff may have an "alias," or "testatum Elegit," to seize them.^(h) And when "nihil" is returned on an "Elegit," or the land taken under it evicted for ever, the plaintiff may, if he pleases, sue out a "Ca. Sa." or "Fi. Fa."⁽ⁱ⁾

It seems a Court of Equity will not oblige a judgment creditor to wait till he is paid out of the rents; but will accelerate the payment by directing a sale of the moiety taken under an "Elegit;"^(k) and, though an equitable interest^(l) in property, such as that of a mortgagor's, cannot be taken in execution; yet the plaintiff, having first sued his writ of execution against the defendant,^(m) may file a bill in equity to redeem the estate, by paying principal and interest due on the mortgage.⁽ⁿ⁾ In equity, too, interest beyond the penalty of a judgment would be allowed to be recovered.^(o)

If land delivered on an "Elegit" be wholly and for ever evicted, the plaintiff, his executors, or administrators, may have a "Sci. Fa." out of the

(h) 2 Wms. Saund. 68. s. n.

(i) 1 Leon. 176.

(k) 2 Atk. 610.

(l) 2 New Rep. 461.

(m) 3 Atk. 200.

(n) Ibid. and 759.

(o) 3 Atk. 517.

court whence the execution was sued; (p) but the whole of the land must be evicted, and for ever: for if a part only be evicted, even so that one acre only be left, or if the whole be evicted only for a given time, (as for satisfying a prior judgment,) the plaintiff must be contented to hold that acre, or wait for that reversion, though it be but a poor remedy, no other being given under the statute. (q)

On the return day of a "Fi. Fa.," if the sheriff being called on, by rule, to return the writ, neglect to do so, or to offer a reasonable excuse, the courts will grant an attachment against him. (r) If "nulla bona" be returned, the plaintiff may have an "alias Fi. Fa.," or, if necessary, a "pluries," into the same county, or a "testatum" into a different county, suggesting that the defendant has goods there; (s) and this writ may be awarded into Wales, or a county palatine. (t) Or the plaintiff may sue out an "Elegit," or a "Ca. Sa." and

(p) 32 H. 8. c. 5. Co. Litt. 290. a.

(q) 4 Rep. 66. a.

(r) 1 H. Blackst, 543. But if the property of goods be disputed, which frequently happens on a commission of bankrupt, &c. the courts, on the suggestion of a reasonable doubt, will enlarge the time for the sheriff's making his re-

turn, till the right be tried between the contending parties, or one of them has given him a sufficient indemnity, Tidd, 1000. 2 Blackst. 1064. 7 T. R. 174. 1 East, 338. 1 Taunt. 120:

(s) Tidd, 1001.

(t) 2 Wms. Saund. 123, 4. a.

in any of these writs there may be a clause of "non omittas."

If the return be not true, the plaintiff may maintain an action against the sheriff, for the false return. (u)

Where the defendant has only an equity of redemption in a *leasehold* estate, a "Fi. Fa." will not affect it; as the legal estate is in the mortgagee, the plaintiff's only remedy, in that case, is to file a bill in equity to redeem the estate, by paying off the principal and interest due on the mortgage. (8 East, 467. 3 Atk. 200, 739.) but he must first take out execution.

The plaintiff cannot regularly sue out a "Fi. Fa." into a different county from that where the action is laid, without a "testatum," (x) nor a "testatum" without a previous "Fi. Fa.;" (y) but the award of a "testatum" on the roll is sufficient to warrant a "Fi. Fa." into a different county: (z) or if a "Fi. Fa." be sued into one county when it should have been a "testatum," without any original "Fi. Fa." and the plaintiff afterwards sues out an original "Fi. Fa." the court will permit the party to amend the former writ on

(u) Where the sheriff returns "nulla bona," and there is a recovery against him for his false return, that vests no property of the goods in him, or the plaintiff, but they remain in the defendant, and are liable to a subsequent execution for his debt. 2 Vern. 239.

(x) 2 Blackst. Rep. 694.

(y) 3 T. R. 388.

(z) Barnes, 196.

payment of costs ; (a) and they will not set aside a "testatum" sued out, without an original "Fi. Fa." to warrant it, if the plaintiff afterwards sue out such original "Fi. Fa.," and get it returned and filed, so as to be able to produce it on shewing cause, (b) though a writ of error has been previously brought. (c) In the King's Bench it is said the "Fi. Fa.," on which the "testatum" is founded, is returned of course by the attornies themselves, as originals are. (d)

In all continued writs, the "alias" or "testatum" must be tested the day the former was (e) returnable ; for though, on mesne process there can be no "testatum" 'till the "quarto die post," yet it is otherwise in writs of execution, for in these the party has no day in court. (f)

If a part only of the money be levied, the plaintiff may have another "Fi. Fa.," "Elegit," or "Ca. Sa.," for the residue ; (g) or may bring an action on the judgment, wherein the defendant may be arrested, if he was not in the original action. (h) But the first writ must be returned ; for the second, grounded on it, must recite that all the money was not levied thereon. (i)

If the sheriff return "nulla bona," and that the

(a) 3 T. R. 657.

(b) 2 Salk. 589. Barnes,
200.

(c) 5 T. R. 272.

(d) 2 Salk. 590.

(e) Id. 699.

(f) T. Jon. 200.

(g) Tidd, 1005.

(h) 1 New Rep. 133.

(i) Barnes, 213.

defendant is a beneficed clerk, having no lay fee, there goes a "*Levari facias de bonis ecclesiasticis*" to the bishop of the diocese wherein the benefice lies. (k) This writ is similar to a "*Fi. Fa.*," and the bishop may seize and sell the profits of the benefice; (l) but he must return "*Fieri Feci*," and not "*sequestrari feci*;" (m) he may also be called on, by rule, to return the writ, and is liable to an action for a false return. (n)

Upon this writ the bishop or his officer makes out a "*sequestration*," directed to the churchwardens, or, upon proper security, to persons of the plaintiff's own appointment, requiring them to sequester the tithes and other profits of the benefice; (o) which sequestration, in order to give it priority against others, should forthwith be duly published, by being read in church during divine service, and afterwards at the church door, a copy being affixed thereon. (p)

The writ of "*Levari facias de bonis ecclesiasticis*," is a continuing execution; and if the sequestration issue and be published before the writ is returnable, it is sufficient, and the plaintiff is entitled to the growing profits from time to time, though long after it is returnable, until he be satisfied the sum indorsed on the writ. (q) Yet, if it

(k) Gilb. Exec. 26.

(l) 2 Mod. 257.

(m) 1 Str. 87.

(n) Gilb. Exec. 26.

(o) Barnes's Eccl. Law, tit. Sequestration, 3. v. 317.

(p) Ibid.

(q) Ibid.

be actually returned, the authority of the bishop is at an end. (r) The proper way, therefore, is to rule the bishop from time to time, to know what he has levied. (s)

Where the execution is on a judgment against an executor or administrator, if the sheriff return "nulla bona" to the "Fi. Fa.," the plaintiff, as we have seen, (t) must proceed by "Scire Fieri enquiry," or by action of debt on the judgment, suggesting a "devastavit;" but if a "devastavit" be at once returned by the sheriff, the plaintiff may have execution immediately against the executor or administrator himself, by "Ca. Sa.," "Fi. Fa.," or "Elegit."

When the sheriff has returned "Fieri Feci," the plaintiff may proceed against him for the money, by rule of court, or action of debt founded on his return; or, though no return be made, an action of debt, account, or assumpsit, will lie against the sheriff or his executors for the money levied; (u) and in such action the statute of limitations cannot be pleaded; for though, 'till the writ be returned, it is not matter of record, yet it is founded on a record, and has a strong relation to it. (x)

If the sheriff return, that he has taken goods which remain in his hands for want of buyers, the

(r) 2 H. Bl. 582.

(s) Ibid.

(t) Ante.

(u) Cro. Car. 539. 2 Show.

79, 281. Gilb. Exec. 25.

(x) 2 Show. 79.

plaintiff may sue out a writ of "venditioni exponas," reciting the former writ and return, and commanding the sheriff to expose the goods to sale, and have the monies arising therefrom, in court, at the return of the "venditioni exponas;" (y) or, if goods are taken, but not to the amount of the debt, the plaintiff may have a "venditioni exponas" for part, and a "Fi. Fa." for the residue, in the same writ. (z) It *has* been said, the sheriff is bound to find buyers; (a) but the court of C. P. refused to grant an attachment against him, on his returning to a "venditioni exponas," that part of the goods remained in his hands for want of purchasers. (b)

When the old sheriff returns, that goods remain in his hands for want of buyers, the usual way of proceeding in K. B. is, by writ of "Distringas" to the new sheriff, commanding him to distrain the old one, 'till he sell the goods, and have the money in court himself; (c) or, (which is less usual,) deliver the money arising from the sale, to the new sheriff to bring into court. (d)

(y) Cowp. 406. Equity will compel a sale of the moiety of land taken under an "Elegit," if the annual value be very small in comparison of the debt. 2 Atk. 610. Ambl. 17. Tidd, 912.

(z) Thes. Brev. 305.

(a) 2 Ld. Raymd. 1075.

(b) 1 Bos. and Pul. 359.

(c) 1 Salk. 323. 2 Lord Raymd. 1074. In writs on *mesne* process, the proceeding against the late sheriff, by "distringas," has given place to attachments. Tidd, 287.

(d) Gilb. Exec. 21. 34 Hen. 6. 36.

2. A.—With respect to the defendant's redress and protection in executions generally, if a writ be irregular, the defendant may move the court ^(e) to set it aside, and that the goods or money levied may be restored to him. A third person, whose goods are taken, may also move the court to have them restored. But if the right be not clear, the court will leave him to bring his action against the sheriff; or they will sometimes direct an issue for trying the right, and retain the money in court, to abide the event of the trial. ^(f)

Upon an erroneous judgment, if there be a regular writ, the party may justify under it, 'till the judgment is reversed; for an erroneous judgment is the act of the court, ^(g) and the party need not set forth in his plea, that the writ has been returned. But if the judgment or execution has been set aside for irregularity, the party cannot justify under it; for that is a matter in the privity of himself or his attorney; and if the sheriff or other officer, in such case, join in the same plea with the party, he loses the benefit of his own defence: ^(h) the sheriff or his officer, nevertheless, may justify under an irregu-

^(e) The indulgence now shewn by the courts in granting summary relief on motion, in cases of evident oppression, has almost rendered useless the writ of "audita querela," though formerly it was the only means of redress in such

cases, (1 *Ld. Raymd.* 439.) The manner of proceeding on it may be seen, 2 *Wm. Saund.* 148. b.

^(f) *Tidd*, 1007.

^(g) 1 *Str.* 509.

^(h) *Ibid.*

lar judgment, as well as an erroneous one; for they are not privy to the irregularity; and so as the writ be not void, it is a good justification, however irregular, and the purchaser will gain a title under the sheriff. (i) But the sheriff, justifying on a returnable process, must shew the return of the writ.

Where the money has been levied and paid on an execution, and the judgment is afterwards reversed, there the party shall have restitution without a "Sci. Fa.," because it appears on the record that the money is paid, and there is a certainty of what was lost. But where it is levied and not paid, there must be a "Sci. Fa." suggesting the matter, viz., the sum levied, &c. If the judgment be set aside after execution, for irregularity, there needs no "Sci. Fa." for restitution; but if it be not made, an attachment shall be granted on the rule, for a contempt. (k)

We must here remember, that a writ of error allowed, with the proper bail put in, where requisite, is a supersedeas to execution; (l) that is, the execution must be delayed, at least, to wait the event of the writ of error. But notice must be given to the sheriff before the actual sale of goods or delivery of lands; otherwise too late. (m)

2. B.—Taking the writs in the order hitherto adopted, if the defendant be aggrieved on an ex-

(i) 1 Vez. 195. 1 Maule and Selwyn, 425.

(k) 2 Salk. 588.

(l) 2 Bac. Abr. 740.

(m) 2 Roll. Abr. 491.

tent for the king, he may put in a plea to the writ, and the matter in issue will be fairly tried. The party is allowed to traverse the inquisition on an extent, because the king cannot be a wrong doer; and therefore the party cannot have an assize or ejectment if once put out of possession. See Gilbert, Exec. 44. 4 Rep Company of Sadlers' case. 36 E. 3. c. 13. The cases on "*Melius inquirendum*," are, 4 Rep. 74. 2 Leon. 121. Noy. 45. b. 13 Rep. 48. Hob. 38. 7 Rep. 168. Hob. 20, 253. 5 Rep. 52, 55. Cases on void inquisitions, Hardr. 191, 106, 59, 85, 75, 422. Leon. 33. On traverses and office found, 4 Rep. 54, 60.

A defendant, taken on a "*Ca. Sa.*," being once discharged, cannot be taken again on the same judgment, even though he were set at liberty under an agreement, which he afterwards omits to fulfil.⁽ⁿ⁾ And a discharge of one of several defendants, taken on a joint "*Ca. Sa.*," is a discharge of all from execution affecting the person.^(o) But if one of two defendants, in custody under a joint "*Ca. Sa.*," be discharged under an insolvent act, the other shall not therefore be discharged, for the discharge of the one was the act of law.^(p)

With respect to the return of the "*Ca. Sa.*," by which bail are fixed, if the principal be actually in the custody of the sheriff, and the latter, at the instance of the plaintiff, return "*non est inventus*"

(n) 7 T. R. 420. 2 East, 243.

(o) 6 T. R. 525.

(p) 5 East, 147.

to the "Ca. Sa." against the principal, the court will set aside such return, together with all subsequent proceedings against the bail, and order the money, levied under an execution against them, to be restored. (q)

A party taken, without lawful warrant, has his action of false imprisonment and assault against the officer or person taking him: so, his action of assault, if unnecessarily beaten. (r)

On an "Elegit," when the plaintiff, in due time, according to the rate at which the lands were valued, has been satisfied his debt, the defendant may enter; (s) (*i. e.* without further process, bring his ejectment, if any opposition be made.) But where the debt has been satisfied by any great casual profit, or the defendant has brought the whole money due into court, he must, in order to regain possession, bring his "Sci. Fa. ad rehabendam terram." (t) It was necessary in every instance to sue out this writ before entry, after satisfaction of a debt, by extent on a Statute Staple; and the reason given is that the conusee of a statute staple, or recognizance in the nature of it, being in by matter of record, shall not be put out but by matter of record. (u) But it is not easy to see why the tenant by Elegit should not, as to this point, of entry after satisfaction, be affected in

(q) 1 New Rep. 251.

(t) Ibid.

(r) 9 Rep. 69.

(u) 4 Rep. 67.

(s) 2 Inst. 33.

the same manner as tenant under a Statute Staple ; the former being in by matter of record also.

However, the mode usually resorted to at present to obtain an account, is, by bill in equity ; which seems by far the preferable method ; for the sheriff extends the lands only at the annual value, and often much below the real ; the creditor holding, at this rate, "*quousque debitum satisfactum fuerit*," the debtor cannot, at law, upon a writ of "*Sci. Fa. ad computandum et rehabendam terram*," insist upon the creditor's accounting for more than the extended value. But if the debtor comes into a court of equity for relief, the court will give it him, by obliging the creditor to account for the whole he has received ; and as they who come for equity must do equity, will direct the debtor to pay interest to the creditor, even though it should exceed the penalty of a judgment. (x)

Observe, that where the lands are extended at an under value, the plaintiff hath an interest in them which cannot be divested by finding of surplusage. (y)

On a "*Fi. Fa.*," if any money remains in the sheriff's hands, after satisfaction of the debt, damages and expences of execution, the sheriff must restore it to the defendant ; but need not do so before he is requested. (z)

When the sheriff has *taken* goods on a "*Fi.*

(x) 3 Atk. 517.

Jac. 85.

(y) Cro. Eliz. 266. Cro.

(z) Noy. 59.

Fa." to the amount of the sum directed to be levied, the defendant is discharged, and may plead it in bar to an action of debt, or "Sci. Fa." on the judgment. (a) But where two persons are jointly and severally bound, and execution is had against one of them, and his goods are seized but not sold, this cannot be pleaded by the other obligor in an action of debt against him; for 'tis no actual satisfaction to the plaintiff. (b)

In strictness, the money is to be brought into court; but return of payment over to the party is good by permission of the court, though not by force of law: (c) and where a judgment is reversed, the money levied is restored, but not the property taken; unless, perhaps, where it has been sold to, and remains in the hands of, the plaintiff.

When a judgment has been *satisfied*, by any of the before-mentioned writs of execution, or otherwise, the defendant has a right to call on the plaintiff for a warrant or authority, directed to some attorney of the court wherein the judgment is recovered, authorising such attorney to enter up satisfaction on the judgment roll; which, being obtained, a "satisfaction piece" is made out in the King's Bench, on a slip of unstamped parchment, in the form of a bail piece, and taken with the warrant of attorney to the clerk of the judgments,

(a) 1 Salk. 322.

(c) 3 Lev. 203.

(b) Ibid.

who will make an entry thereof in his book of remembrances, and deliver it over to the clerk of the treasury, who enters the same on the roll. In the Common Pleas, the clerk of the treasury brings the judgment roll into court in *term* time, and the secondary enters satisfaction thereon. In vacation a judge's "fiat" is obtained for that purpose, by the clerk of the judgments, who enters satisfaction on the roll. On entering satisfaction on the roll, it is usual for the plaintiff to pay one shilling for every hundred pounds recovered, to the secondary, who passes it over to the junior judge's clerk, by whom it is distributed among the prisoners in the Fleet prison. (*d*)

(*d*) Tidd, 1033.

CHAPTER VII.

1. *Of "Capias Utlagatum" after Judgment.*
2. *Of Attachments.*

1.—**WHEN**, in actions which have been commenced by original, the sheriff returns non est inventus" to a "Capias ad satisfaciendum," the plaintiff in those actions, and in those only, may have an "exigi facias," and proceed to outlawry; and this, without an "alias" or "pluries Ca. Sa.;" (a) because, the defendant having been already in court before judgment, and being sufficiently aware of the debt, ought to satisfy it on the first suing out of the "Ca. Sa.;" and his non-performance of this duty is a contumacy, for which he is put out of the king's protection. No writ of proclamation under 31 Eliz. c. 3. s. 1., is required upon an "Exigent" after judgment, but only upon mesne process. (b)

In the Common Pleas the defendant may be outlawed upon a common or special original; but in the Exchequer there can be no outlawry, as the

(a) Gilb. C. P. 17. Trye, (b) Cro. Jac. 577.
77. 124. Tidd, 131.

plaintiff cannot proceed in that court by original writ.

The writ of "Exigi Facias" is made out by the filacer in the K. B. and by the exigenter in C. P., on leaving with them the "Capias ad Satisfaciendum," with the sheriff's return of "non est inventus." It should be tested on the "quarto die post" of the return of the "Ca. Sa.," and directed to the sheriff of the county where the action is laid, (c) commanding him to cause the defendant to be required from county court to county court, or from husting to husting, (d) if in London, at five successive county courts or hustings, until he be outlawed if he do not appear, and if he appear, to take him. (e) If there be not five county courts between the teste and return of this writ, there issues upon the sheriff's return of it an "Exigent" de novo, with a clause (from which the writ is called an "allocatur") directing the sheriff to allow the several county courts at which the defendant has already been required. (f)

If the defendant be taken or appear on this "Exigent," issued after judgment and "Ca. Sa.," he stands in the same situation as if taken on the "Ca.

(c) Bro. Abr. tit. Exigent. Dy. 295. Contra 3 Bac. Abr. 769. Gilb. C. P. 15.

(d) The hustings in London being held every fortnight, renders it advisable for the

plaintiff to lay his action there, when he intends to proceed to outlawry. Trye, 66.

(e) Trye, 112.

(f) Trye, 114.

Sa.;" for it would be very unreasonable that the defendant should gain an advantage by standing out till process of outlawry; (g) he certainly ought not to be in a better condition than if he had been taken at first.

If he be neither taken; nor appear, but makes default at five successive county courts or hustings, he is outlawed; or if a woman, she is *waived*, by the judgment of the coroners; or, in London, of the recorder; (h) and the judgment of outlawry being returned by the sheriff on the "exigent," the filacer will make out a writ of "*Capias Utlagatum*," either general or special; and it may be issued into any county without a "testatum." (i)

By the *general* writ of "*Capias Utlagatum*" the sheriff is commanded, "that he do not omit by reason of any liberty of his county, but that he take the defendant, if he be found in his bailiwick, and him safely keep, so that he may have his body in court on a general return-day, wheresoever, &c.;" or in the Common Pleas, "before the king's justices at Westminster," "to do and receive what the court shall consider of him," (k) and the defendant being taken upon this writ, shall be in execution for the party if the party will; for though the defendant is in execution for the king under the "*Capias Utlagatum*," yet it is in consequence of

(g) Tidd, 135.

(i) 1 Vent. 33.

(h) Co. Litt. 288. b.

(k) Trye, 115.

the party's process: (1) but if a "Capias" does not lie for the party in the action, or the defendant is taken by the "Cap. Utl." after the year, he shall not be in execution for the party without prayer. (m)

By the *special writ* of "Capias Utlagatum," the sheriff is commanded, not only to take the defendant, but to enquire by the oath of honest and lawful men of his county, what goods (n) and chattels, lands and tenements, (o) he hath or had on the day of his outlawry, or at any time afterwards; and by their oath to extend and appraise the same, according to their true value; and to take them into the king's hands, and safely keep them, so that he may answer to the king for the true value and issues of the same, making known to the court what he shall do thereupon, on the return day. (p)

Witnesses may be subpoena'd to attend the execution of the inquiry; and when it is made, the sheriff is to take possession of the defendant's goods and chattels, and of the *leasehold* tenements in his occupation; (q) but he is not to disturb the

(1) Com. Dig. Exec. C. 11.

(m) 5 Rep. 88.

(n) This includes debts, or choses in action. 4 Rep. 99. Lane, 23. Lutw. 329. 1513. Gilb. C. P. 200. but see, 2 Rol. Abr. 806. l. 52. Sav. 40.

(o) Leasehold and freehold, but not copyhold, (Parker, 190.) or trust property. Cro. Jac. 513. Sty. 41. Tidd, 139.

(p) Trye, 115.

(q) Tidd, 139.

possession of defendant's tenants, (r) and can only take the profit of his freehold tenements. (s)

The inquisition should set forth with *convenient certainty*, the appraised value of the goods; the particulars of the debts; of what lands the defendant is seised or possessed, the different parcels, in whose tenure, and of what annual value beyond reprises. (t)

But the inquisition being an office of information, does not require so much certainty as an office of entitling; (u) but a "*melius inquirendum*" issues if necessary. (x)

The sheriff's return and inquisition is carried to the filacer, and filed in the office of Custos Bre-vium, (y) whence a transcript is sent into the Exchequer. (z)

Out of this court then issues a "*venditioni exponas*" to sell the goods and chattels, a "*Scire Facias*" to recover the debts, and a "*levari facias*" to levy the profits of freehold lands; (a) under this writ the sheriff may take even the cattle of a stranger levant and couchant upon the land. (b) A *bill* may be exhibited in the Exchequer in aid of these writs, against the outlaw, to compel a discovery of his real and personal estate, either by the

(r) Tidd, 139.

(x) Hard. 106.

(s) Plowd. 541. Hard. 106.

(y) 3 T. R. 578.

176.

(z) Gilb. C. P. 16.

(t) Tidd, 139.

(a) Tidd, 140.

(u) 2 Salk. 469.

(b) 1 Ld. Raymd. 305.

plaintiff or the attorney general; (c) or an information in the nature of a trover and conversion, against him that hath the goods of the outlaw. (d)

The money raised under these writs cannot be obtained by the plaintiff by any ordinary process against the sheriff, who is accountable to the crown only for the same; but the plaintiff may have it in satisfaction of his debt and costs, by application to the court of Exchequer, or the lords of the treasury.

If the money raised do not exceed fifty pounds, the court of Exchequer will, on motion, order it to be paid to the plaintiff; if it exceed that amount, the plaintiff must petition the lords of the treasury, who will also give him a lease or grant, under the exchequer seal, of the king's right to levy the profits of the land. (e)

The petition being referred by the lords of the treasury to their solicitor, who is furnished with a certificate of the proceedings from the clerk in court, and an affidavit of the amount of the debt and costs being made, before a baron, and filed with the clerk of the treasury, a warrant is issued under the king's sign manual, for the attorney general to consent to an order, pursuant to the prayer of the petition; and upon his consenting accordingly, on motion, the order is made out, en-

(c) Hard. 22.

(e) Hard. 106.

(d) 1 Mod. 90.

grossed, and put under seal, with a subpoena annexed to perform it. (f)

The sheriff being served therewith must pay over the money, or incur an attachment.

It is necessary that an eight-day rule should be given on the back of the transcript of the sheriff's return after the inquisition, before any "*Venditioni exponas*" issue to sell the goods; and if there be not eight days in term time, the rule may be given for the general seal out of term. The intention of this rule is to afford an opportunity for any one to come in and claim the goods. (g)

Though a chattel real, as a term for years, may be sold under the "*Venditioni exponas*," yet a freehold cannot; for an outlaw in civil cases does not forfeit his freehold lands, but only the profits thereof during his outlawry.

A lease of these lands is acquired at less expence than a grant; but if the goods and lands do not amount to something considerable, so as to pay all the charges of petitioning, &c. and yield the plaintiff something in addition towards his demand, it will not be worth while to proceed.

The mode of reversing an outlawry may be found at length in Tidd, page 141.

2.—An attachment is a process from a court of record, awarded by the justices at their discretion, on a bare suggestion, or on their own know-

(f) Tidd, 141.

(g) 1 Lee's Prac. Dic. 250.

ledge; and is properly grantable in cases of contempts. (*k*)

Attachment lies against attornies for base dealing by their clients, in delaying suits, &c., as well as for contempts to the court; (*i*) against sheriffs making false returns of writs; against bailiffs for frauds in arrest, and exceeding their power, &c. For contempts against the king's writ; using them in a vexatious manner; altering the teste, or filling them up after they are sealed; for contempts of an enormous kind, in not obeying writs, &c., attachment may issue against peers. (*k*)

Attachment lies for persuading jurors not to appear on a trial; for obstructing the proceedings of the court; (*l*) for contemptuous words spoken of the court or its process; for a rescue or disobedience to a subpœna or other process; for non-payment of costs on the master's allocatur, or not performing an award. (*m*)

The court of B. R. may award an attachment against any inferior courts usurping a jurisdiction, or acting contrary to justice; (*n*) though it is usual first to send out a prohibition. Attachment lies for proceeding in an inferior court, after a "habeas corpus" issued, and a supersedeas to stay proceed-

(*k*) Leach's Hawk. P. C. ii.
c. 22. 1 Wils. 300.

(*i*) 2 Hawk. c. 22. s. 11.

(*k*) 2 Hawk. c. 22. s. 33.

(*l*) 1 Lill. 121.

(*m*) Tidd, 483.

(*n*) Salk. 201.

ings; (o) and it may be granted against justices of the peace, for proceeding on an indictment after a "certiorari" to remove the indictment: (p) But it does not lie against a corporation, the mode of compulsion being by sequestration. (q)

Attachment lies against a lord that refuses to hold his court after a writ issued to him for that purpose. (r)

An attachment is the proper remedy for disobedience of the rules of court; as of those made in ejectment, arbitrament, &c. So where a defendant in account, being adjudged to account before the auditors, refuses to do it. (s) But an attachment is not granted for disobedience of a rule of "Nisi Prius," unless it be first made a rule of court; nor for disobedience of a rule made by a judge at his chamber, unless it be entered; nor for disobedience of any rule without personal service. (t)

An attachment is proper for abuses of the process of the court, as for suing out execution where there is no judgment; bringing an appeal for the death of a person known to be alive. It seems, also, that counsellors are punishable by attachment for foul practices; gaolers for misbehaviour in their offices; witnesses for non-attendance at a trial. (u)

(o) 21 Car. B. R.

(p) 1 Lill. 121.

(q) Cowp. 377.

(r) New. Nat. Brev. 6.

(s) 1 Mod. 21. 1 Salk. 71.

(t) 1 Salk. 84.

(u) Leach's Hawk, P. C. ii.

c. 22. s. 30.

Except against the sheriff for not obeying a peremptory rule to return a writ or bring in the body, and against other persons for non-payment of costs on the master's "allocatur," or for contemptuous words spoken of the court; in which cases the rule is absolute, ^(x) attachments are usually granted on a rule to shew cause; unless the offence complained of be of a flagrant nature, and positively sworn to. In this case the party is ordered to attend in person; and if he shall appear to be clearly guilty, the court, in discretion, will either commit him immediately, in order to answer interrogatories concerning the contempt complained of, or will suffer him to enter into recognizance to answer such interrogatories; which, if they be not exhibited in four days, the party may move to have the recognizance discharged; otherwise he must answer them, though exhibited after the four days: but, in all cases, if he fully answer them, he shall be discharged as to the attachment, and the prosecutor shall be left to proceed against him for perjury, if he think fit. ^(y)

Upon all these examinations the master is to make his report, and the party is then, and not before, adjudged in contempt; ^(z) and in the latter case is either immediately sentenced or committed to the marshal; unless the court waive giving judgment, and order the recognizance to be

^(x) Tidd, 483.

1 Salk. 84.

^(y) 2 Hawk. P. C. c. 22. s. 1.

^(z) 3 Burr. 1257.

discharged; (a) or the attorney general consent that the party may continue on the recognizance, to appear under a rule of court at some future time. (b)

The attachment is a criminal process; but, until it is granted, the proceedings in the K. B. are on the plea side of the court, and must be entitled with the names of the parties. As soon as the attachment is granted, the proceedings are on the crown side, and from that time the king is to be named as the prosecutor. However, attachments for non-payment of costs, and for non-performance of an award, are in the nature of civil executions. (c)

One of the most usual occasions for issuing the process of attachment, is against the sheriff, for not returning a writ, or bringing in the body, after having returned "*cepi corpus*." This practice seems to have superseded that of *amerciament*, which was usual till about the year 1729. (d) A rule being granted for the sheriff to return the writ or bring in the body, six days are allowed him in the country for that purpose, and four in London or Middlesex: if, at the expiration of that time, the rule is not obeyed, an attachment may be applied for by motion in court, grounded on an affidavit of the service of the rule, of a return

(a) 3 Burr. 1258.

(e) 1 T. R. 266.

(b) 2 Burr. 797.

(d) 2 H. Blac. 434.

not being found at the office of "custos brevium," or of bail not being put in and justified. (e) The above rule cannot be obtained if the plaintiff has proceeded on a bail bond, unless the bail bond be void; for the plaintiff may not proceed on the bail bond, and rule the sheriff too. (f)

In the King's Bench the sheriff's contempt is not purged by a surrender on a day subsequent to the expiration of the rule, though an attachment be not moved for; (g) but in the Common Pleas, if the defendant justify his bail before the plaintiff move for an attachment, the sheriff will not be liable. (h)

This attachment may be moved for on the last day of term, (i) is absolute in the first instance, and must be made returnable on a general return day, though the preceding process were on a day certain. (k) It is irregular if taken out before the day after the expiration of the time allowed by the preceding rule; (l) and the rule is irregular if issuing in vacation, though tested on the day of the sheriff's return. (m) The sheriff has the same time to obey the rules as the defendant to put in bail. (n) Bail, (whether original or added,) (o) which

(e) Doug. 464.

(k) 1 Str. 624.

(f) 1 Wils. 223.

(l) 5 T. R. 479.

(g) 8 T. R. 30.

(m) 2 East, 241.

(h) 1 H. Bl. 9.

(n) 1 N. R. 139. 8 T. R.

(i) Burr. 651. 1 Bos. and 464.

Pull. 312.

(o) 8 T. R. 258.

did not justify in time, must be excepted to before the sheriff can be attached; (p) but he is still liable, though the rule for the allowance of bail be not served; (q) and if he be in contempt before the death of the defendant, the attachment shall still issue. (r) If the sheriff be ruled on the last day of term, but goes out of office before the next term, he is liable to the attachment for not bringing in the body; (s) but if not ruled within six months after the expiration of his office, he cannot be attached. (t)

The sheriff must be called upon in a reasonable time, and where the plaintiff delayed from Hilary to Michaelmas term, the attachment was set aside; (u) but the sheriff, by delay, waives irregularity in the issuing of an attachment.

An attachment granted against the present sheriff, must be directed to the coroner; against the late, to his successor; and if one sheriff die where two have been ruled, the attachment will be granted against the survivor. (x) An attachment against the coroner is directed to elisors, named by the master in the K. B., or prothonotaries in C. P. (y)

By indulgence of the courts, an attachment may be set aside on payment of costs, where bail

(p) Loft, 159.

(q) 4 T. R. 493.

(r) 3 T. R. 133.

(s) 1 H. Bl. 629.

(t) 2 T. R. 1. 20 Geo. 2.

(u) 7 T. R. 452. 3 Bos. and

Pull. 151. 1 Taunt. 111.

(x) Willic v. Benswell, T.

25 G. 3.

(y) 2 Blac. Rep. 911.

is put in, and no trial lost. (z) But the sheriff, in general, can only be relieved from an attachment for not bringing in the body, by paying the whole debt and costs, and not merely the sum sworn to and costs. (a) In the Common Pleas the attachment may be avoided by justifying bail and paying costs; (b) and a "cognovit," without notice, discharges the sheriff. (c)

(z) 4 T. R. 352. 7 T. R. 239.

(b) 1 Bos. and Pull. 325, 1 Taunt. 56.

(a) 7 T. R. 370.

(c) 1 Taunt. 159.

FORMS.

Of CONFESSION and of WRITS of INQUIRY, of POSTEAS, and of JUDGMENTS.

In the King's Bench.

A. B. plaintiff,
and
C. D. defendant.

(§ 1.)
Confession of
the action, in
assumpsit.

I CONFESS this action, and that the plaintiff hath sustained damages to the amount of — *l.* (the damages as laid in the declaration,) besides his costs and charges, to be taxed by the Master; but no judgment is to be entered up, or execution issued, until the — day of — next, in default of payment of the sum of — *l.* (the real debt) being the debt in this action, together with the said costs: And I do hereby agree that no writ of error shall be brought, nor bill in equity filed; and that in case the plaintiff shall enter up his judgment in default of payment, he shall be at liberty to levy the said sum of — *l.* together with the costs, sheriff's poundage, and all other incidental expenses. As witness my hand this — day of — 18—.

C. D.

I confess the debt in this cause, and that the plaintiff hath sustained damages to the amount of *1s.* besides his costs and charges to be taxed by the Master, &c. (as above).

(§ 2.)
The like, in
debt.

(§ 3.)
The like, re-
lictâ verifica-
tione.

I do hereby agree to withdraw the plea (or demurrer) by me pleaded (or put in) in this cause; and do confess this action, or the debt therein, &c. (as before).

(§ 4.)
Writ of in-
quiry, by bill.

George the Third, by the grace of God, of the united kingdom of *Great-Britain* and *Ireland* king, defender of the faith. To the sheriff of — greeting: Whereas *A. B.* lately in our court before us at *Westminster*, by bill without our writ, impleaded *C. D.* being in the custody of the marshal of our marshalsea before us: For that whereas, &c. (here recite the declaration,) to the damage of the said *A. B.* of — l. as he said, and thereupon he brought his suit, &c. And such proceedings were thereupon had in our said court before us at *Westminster* aforesaid, that the said *A. B.* ought to recover against the said *C. D.* his damages on occasion of the premises: But because it is unknown to our said court before us, what damages the said *A. B.* hath sustained by means of the premises aforesaid: Therefore we command you, that by the oath of twelve good and lawful men of your bailiwick, you diligently inquire what damages the said *A. B.* hath sustained, as well by means of the premises aforesaid, as for his costs and charges by him about his suit in this behalf expended; and that you send to us at *Westminster*, on — next after — the inquisition which you shall thereupon take, under your seal, and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness *Edward Lord Ellenborough*, at *Westminster*, the — day of — in the — year of our reign. *Way.*

(§ 5.)
The like, into
a county-pala-
tine:

George the Third, &c. To our chancellor of our county-palatine of *Lancaster*, or to his deputy there, greeting: Whereas *A. B.* lately in our court before us at *Westminster*, by bill without our writ, impleaded *C. D.* being in the custody, &c. (as before): And such proceedings were thereupon had in our said court before us at *Westminster* aforesaid, that the said *A. B.* ought to recover against the said

C. D. his damages on occasion of the premises: But because it is unknown to our said court before us, what damages the said *A. B.* hath sustained by means of the premises aforesaid; therefore we command you, that by our writ under the seal of our said county-palatine to be duly made, and directed to the sheriff of the same county, you command the said sheriff, that by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the said *A. B.* hath sustained, as well by means of the premises aforesaid, as for his costs and charges by him about his suit in this behalf expended; and that you send to us at *Westminster*, on — next after — the inquisition which the said sheriff shall thereupon take, under his seal, and the seals of those by whose oath he shall take that inquisition, together with this writ. Witness, &c.

George the Third, &c. To the sheriff of — greeting; Whereas *C. D.* was attached (or summoned) to appear in our court before us, to answer *A. B.* of a plea, that whereas, &c. (to the end of the declaration.) And such proceedings were thereupon had, &c. (as in a writ of inquiry by bill, making the return general, *wheresoever, &c.*)

(§ 6.)
Writ of inquiry, by original.

For the Writ of Inquiry in Replevin, vide post, § 7, 8.)
Replevin.

George the Third, &c. To the sheriff of —, and to the right honourable *Edward Lord Ellenborough*, our chief-justice assigned to hold pleas in our court before us, (or, “to our justices assigned to take the assizes in your county”) greeting: Whereas *A. B.* lately in our court before us at *Westminster*, by bill without our writ, impleaded *C. D.* being in the custody of the marshal of our marshalsea before us, of a plea of debt on demand, for — *l.* of good and lawful money of *Great-Britain*, upon and by virtue of a certain writing obligatory, in the penal sum of — *l.* bearing date, &c. and sealed with the seal of the said *C. D.*: And such proceedings were thereupon had in our said court before us, that it was afterwards considered by the same court, that the said *A. B.* ought to recover against

(§ 9.)
Writ of inquiry by bill, in debt on bond, to assess damages on the statute 8 & 9 W. III. c. 11. § 8.

the said *C. D.* his debt aforesaid, together with his damages which he had sustained on occasion of the detention thereof, &c. whereof the said *C. D.* is convicted, as appears to us of record: And thereupon the said *A. B.* according to the form of the statute in such case made and provided, suggested upon the roll whereon the said judgment so recovered against the said *C. D.* as aforesaid is entered, to the effect following, to wit; that the said writing obligatory whereon the said judgment was so recovered against the said *C. D.* as aforesaid, was made and given by him the said *C. D.* under and subject to a certain condition thereto subscribed, whereby after reciting, &c. (stating the recital, if any, preceding the condition of the bond,) it was declared, that if, &c. (reciting the condition): And the said *A. B.* further suggested on the said roll whereon the said judgment so recovered against the said *C. D.* was and is so entered as aforesaid, that, &c. (here state the suggestion of breaches, to the prayer of a writ of inquiry, and then proceed as follows;) as we have received information from the said *A. B.* in our court before us: And the said *A. B.* having prayed our writ to inquire of the truth of the aforesaid breaches of the said condition of the said writing obligatory, and to assess the damages which he hath sustained thereby; therefore, according to the form of the statute in such case made and provided, we command you the said sheriff, that you summon twelve good and lawful men of your bailiwick, to appear before our said right honourable *Edward Lord Ellenborough*, our said chief-justice assigned to hold pleas in our said court before us, (or "before our said justices of assize,") on — the — day of — next, at the *Guildhall* of the city of *London*, (or "at *Westminster-hall*, in the county of *Middlesex*,") to inquire diligently on their oath of the truth of the premises, and to assess the damages which the said *A. B.* hath sustained by reason of the aforesaid breaches; and that you have on that day before our said chief-justice (or justices of assize) this writ: We likewise command our said chief-justice, (or justices of assize) that he (or they) certify the inquisition before him (or them) taken, to us at *Westminster*, on — next after — toge-

ther with the names of those by whose oath such inquisition shall be taken; and that he (or they) also have there then this writ. Witness *Edward Lord Ellenborough, &c.*

George the Third, &c. To the sheriff of —, and to the right honourable *Edward Lord Ellenborough, &c.* greeting: Whereas *A. B.* lately in our court before us at *Westminster*, by bill without our writ, impleaded *C. D.* being in the custody, &c. of a plea that he should render to him the said *A. B.* the sum of — *l.* of good and lawful money of *Great-Britain*, which he owed to and unjustly detained from him; for that whereas by certain articles of agreement (or a certain indenture) made on, &c. (reciting the whole of the declaration,) to the damage of the said *A. B.* of — *l.* as he said, and therefore he brought his suit, &c. And such proceedings were thereupon had in our said court before us, that it was afterwards considered by the same court, that the said *A. B.* ought to recover against the said *C. D.* his debt aforesaid, together with his damages which he had sustained on occasion of the detention thereof, &c. whereof the said *C. D.* is convicted, as appears to us of record: And the said *A. B.* having prayed our writ to inquire of the truth of the aforesaid breaches of covenant above assigned, and to assess the damages which he the said *A. B.* hath sustained thereby; therefore, according to the form of the statute in such case made and provided, we command you the said sheriff, &c. (as in the last, to the end).

(§ 10.)

The like, in debt on articles of agreement.

George the Third, &c. To the sheriff of —, and also to — our chief-justice of the bench at *Westminster*, (or “to our justices assigned to take the assizes in your county”) greeting: Whereas *C. D.* was summoned to be in our court before our justices at *Westminster*, to answer *A. B.* assignee of — sheriff of the county of — according to the form of the statute in that case made and provided, of a plea that he rendered to the said *A. B.* as assignee as aforesaid, the sum of — *l.* of lawful money of *Great-Britain*, which he owed

The like, in debt on bail-bond, in C. P.

to and unjustly detained from him; for that whereas, &c. (reciting the whole of the declaration,) to the damage of the said *A. B.* as assignee as aforesaid, of — *l.* as he said, and therefore he brought his suit, &c.: And it was in such manner proceeded in our said court, before our justices aforesaid, that it was considered by the same court, that the said *A. B.* ought to recover his said debt, and his damages by occasion of the detention thereof: But because, according to the form of the statute in such case made and provided, a jury ought to inquire of the truth of the said breach of the said condition of the said writing obligatory above assigned, and to assess the damages that the said *A. B.* has sustained thereby; and the said *A. B.* having prayed our writ for that purpose; therefore we command you the said sheriff of — to summon twelve good and lawful men of your county, to appear before — our chief-justice of the bench at *Westminster*, assigned to hold pleas in our said court, (or “before our said justices of assize”) on — the — day of — at — in the county of — to inquire upon their oath of the truth of the said breach, and to assess the damages which the said *A. B.* hath sustained thereby; and that you have on that day, before our said chief-justice (or justices of assize), this writ. We likewise command our said chief-justice (or justices of assize), that he (or they) certify the inquisition before him (or them) taken, to our justices at *Westminster*, in — together with the names of those by whose oath such inquisition shall be taken; and that he (or they) have also there this writ. Witness, &c.

(§ 11.) Take notice, that the plaintiff intends to proceed, after the end of the ensuing term, by giving notice of inquiry in this cause. Dated, &c.

Term's notice of inquiry.

(§ 12.) Notice of inquiry, in *London*.

In the King's Bench.

A. B. plaintiff,
and
C. D. defendant!

Take notice, that a writ of inquiry of damages in this cause will be executed on — the — day of — instant, between the hours of —

and — of the clock in the forenoon of the same day, at the secondaries' office, No. 14, *Lothbury, London*. Dated this — day of — 18—.

Your's, &c.

E. F. plaintiff's attorney.

To Mr. *G. H.* defendant's attorney.

If in *Middlesex*, say, "between the hours of eleven of the clock in the forenoon and one of the clock in the afternoon of the same day, at the sheriff's office, *Bedford Street, Bedford Row*, in the county of *Middlesex*." (§ 13.)
The like, in *Middlesex*.

If in the country, "at the house of —, commonly called or known by the name or sign of — in — street, at — in the county of —." (§ 14.)
The like, in the country.

I do hereby continue the notice of executing the writ of inquiry, given you in this cause, to the — day of — next, when the same will be executed between the hours of — and — at —. Dated, &c. (§ 15.)
Notice of continuance.

Your's, &c.

E. F. plaintiff's attorney.

To Mr. *G. H.* defendant's attorney.

I do hereby countermand the notice of executing the writ of inquiry, given you in this cause. Dated, &c. (§ 16.)
Notice of countermand.

In the King's Bench.

A. B. plaintiff,

and

C. D. defendant.

(§ 17.)

Notice of attending by counsel.

Take notice, that the plaintiff (or defendant) will attend by counsel, on the execution of the writ of inquiry in this cause. Dated, &c.

— (to wit) An inquisition indented, taken at the house of — called or known by the name or sign of — in the said county of — on the — day of — in the — year of the reign of our sovereign lord *George the Third*, by the grace of God of the united Kingdom of *Great-Britain and Ire-* Inquisition on a writ of inquiry, and return.

lord king; defender of the faith, and in the year of our Lord 18—; before ——— sheriff of the county aforesaid, by virtue of a writ of our said lord the king, to the said sheriff directed, and to this inquisition annexed; to inquire of certain matters in the said writ specified, by the oath of *E. F. &c.* honest and lawful men of the said county, who upon their oath say, that *A. B.* in the said writ named hath sustained damages to the sum of ——— *l.* by the means in the said writ mentioned, besides his costs and charges by him about his suit in this behalf laid out, and for his costs and charges aforesaid the sum of ——— *l.* In witness whereof, as well I the said sheriff, as the said jurors, have set our seals to this inquisition, the day and year above-written.

Return.

The execution of this writ appears in the inquisition hereunto annexed.

The answer of ——— sheriff.

The like, on
the statute 8 &
9 W. III. c. 11.
§ 8.

—— to wit. An inquisition indented, taken before me the right honourable *Edward Lord Ellenborough*, his majesty's chief-justice assigned to hold pleas in the court of the lord the king before the king himself, (or "before us ——— and ——— his majesty's justices assigned to take the assizes in the county of ———") on ——— the ——— day of ———, in the ——— year of the reign of our sovereign lord *George the Third*, by the grace of God of the united Kingdom of *Great-Britain and Ireland* King, defender of the faith, and in the ——— year of our Lord 18—, at ——— in the county of ———, by virtue of his majesty's writ directed to the sheriff of the said county, and to me the said chief-justice, (or "to us the said justices of assize") and to this inquisition annexed, by the oath of *E. F. &c.* twelve good and lawful men of the county aforesaid, who being sworn and charged upon their oath, say that, &c. (here set out the finding of the jury, upon the breach assigned); and they further say upon their oath, that the said *A. B.* hath sustained damages by the aforesaid breach of the said condition of the said writing obligatory, besides his costs and charges by him about his suit in this behalf expended, to ——— *l.* In witness whereof I the said chief-justice (or "we

the said justices of assize") have hereunto set my hand and seal (or "our hands and seals") the day and year and at the place above-mentioned.

The execution of this writ appears in the inquisition hereunto annexed. Return.

The answer of — the chief-justice (or "of — and — the justices of assize") within-named.

— to wit. *Subpcena* to testify on inquiry, between *A. B.* plaintiff and *C. D.* defendant, on the part of the plaintiff (or defendant.)

(§ 18.)

Præcipe for subpcena, on a writ of inquiry.

E. F. attorney.

18—

George the Third, &c. To *G. H. &c.* (here insert the names of the witnesses,) greeting: We command you, and every of you, that laying aside all and singular businesses and excuses whatsoever, you, and every of you, be and appear in your proper persons, before our sheriff (or sheriffs) of — on — at — (according to the notice of inquiry,) then and there to testify the truth, according to your knowledge, in a certain cause now depending in our court before us, between *A. B.* plaintiff and *C. D.* defendant, of a plea of trespass on the case, (or as the action is,) on the part of the plaintiff, (or defendant,) on which our certain writ of inquiry of damages hath been sent by us out of our said court, and directed to our said sheriff, (or sheriffs,) then and there in due form of law to be executed; and this you, or any of you, shall in no-wise omit, under the penalty of 100*l.* Witness *Edward Lord Ellenborough, &c.*

(§ 19.)

Subpcena.

By virtue of a writ of *subpcena* to you directed, and herewith shewn unto you, you are to be and appear before the sheriff (or sheriffs) of — on — at — (as in the *subpcena*,) to testify the truth according to your knowledge, in a certain cause now depending between *A. B.* plaintiff and *C. D.* defendant, of a plea of trespass on the case,

(§ 20.)

Subpcena-ticket.

(or as the action is,) on the part of the plaintiff (or defendant), in which cause a writ of inquiry of damages will then and there be executed; and this you are not to omit under the penalty of 100*l*. Dated the — day of — in the — year of the reign of our sovereign lord *George* the Third, &c. and in the year of our Lord —.

By the court.

E. F. attorney for —.

POSTEAS

AFTERWARDS, that is to say, on the day and at the place within-contained, before the right honourable *Edward Lord Ellenborough*, the chief-justice within-mentioned, *William Jones* esquire being associated unto the said chief-justice, according to the form of the statute in such case made and provided, comes the within-named *A. B.* by his attorney within-mentioned, and the within-named *C. D.* although solemnly required, comes not, but makes default; therefore let the jurors of the jury, whereof mention is within made, be taken against him by his default: And the jurors of that jury being summoned, also come, who to speak the truth of the matters within-contained, being chosen, tried and sworn, say upon their oath, that the said *C. D.* did undertake and promise, in manner and form as the said *A. B.* hath within complained against him: and they assess the damages of the said *A. B.* on occasion of the not performing the promises and undertakings within-mentioned, over and above his costs and charges, by him about his suit in this behalf expended, to — *l.* and for those costs and charges to forty shillings: Therefore, &c.

(§ 1.)

Postea for the plaintiff, on *non-assumpsit*, in a town-cause, where the defendant makes default.

Afterwards, that is to say, on the day and at the place within-contained, before the right honourable *Edward Lord Ellenborough*, the chief-justice within-mentioned, *William Jones* esquire being associated unto the said chief-justice, according to the form of the statute in such case made and provided, come as well the within-named *A. B.* as the within-named *C. D.* by their respective attornies within-

(§ 2.)

The like, where the defendant appears.

mentioned; and the jurors of the jury, whereof mention is within made, being summoned, also come, who, to speak the truth of the matters within-contained, being chosen, tried and sworn, say upon their oath, &c. (as before).

(§ 3.) *Afterwards*, that is to say, on the day and at the place within-contained, before the right honourable Edward Lord Ellenborough, the chief-justice within-mentioned, William Jones esquire being associated unto the said chief-justice, according to the form of the statute in such case made and provided, comes the within-named A. B. by his attorney within-mentioned, and the within-named C. D. although solemnly required, comes not, but makes default; therefore let the jurors of the jury, whereof mention is within-made, be taken against him by his default. And the jurors of that jury being summoned, some of them, that is to say, E. F. &c. (here name such of the jurors as appeared at the trial) come, and are sworn upon that jury, and because the residue of the jurors of the same jury do not appear, therefore others of the by-standers, being chosen by the sheriff of the county aforesaid, at the request of the said A. B. (or C. D.) and by the command of the said chief-justice, (if in London or Middlesex; if at the assizes, "by command of the said justices,") are appointed anew, whose names are annexed to the within-written panel, according to the form of the statute in that case made and provided; which said jurors so appointed anew, that is to say, G. H. &c. (naming the tales-men) being called, likewise come, who, together with the said other jurors before impanelled and sworn, being chosen, tried and sworn to speak the truth of the matters within-contained, say upon their oath, that the said C. D. did undertake and promise, &c. (as before).

(§ 4.) *Afterwards*, that is to say, on the day and at the place within-contained, before — one of the justices, &c. and — one of the barons, &c. justices of our said lord the king, assigned to take the assizes in the county of —, according to the form of the statute, &c.

Afterwards, that is to say, at the next general session of assize holden at *Lancaster*, in and for the county, palatine of *Lancaster* within-mentioned, upon the — day of — in the — year of the reign of his present majesty king *George* the Third, before — one of the justices of our said lord the king, &c. and — one of the justices of our said lord the king, &c. justices of our said lord the king at *Lancaster* aforesaid, cometh the within-named *A. B.* by his attorney, and prayeth to be done to him what the law requireth, in order to try the issue within-joined between him and the within-named *C. D.* and whereupon by a writ of our said lord the king, the sheriff of the said county is commanded, that he cause to come before the said justices here at *Lancaster*, on — next to come, in the same session of assize, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties here, &c. At which day here, come as well the said *A. B.* by his attorney aforesaid, as the said *C. D.* by — his attorney; and the sheriff, to wit —, now returneth before the said justices at *Lancaster*, the said writ of *venire facias* to him in form aforesaid directed, together with a panel of the names of the jurors to the same writ annexed, in all things served and executed; and the jurors thereupon impanelled come not: therefore by another writ of the said lord the king, the same sheriff of the county aforesaid is commanded, that he have their bodies before the said justices at *Lancaster*, on — next to come, in the same session, &c. At which day, to wit, on — in the — year of the reign, &c. come here as well the said *A. B.* as the said *C. D.* by their respective attornies aforesaid; and the sheriff returneth before the same justices at *Lancaster*, the same writ, in all things served and executed; and thereupon the jurors impanelled and drawn by ballot, according to the form of the statute in such case made and provided, being called over, likewise come, who to speak the truth of the matters within-mentioned, being elected, tried and sworn, on their oath say, &c. And hereupon, the said justices at *Lancaster* aforesaid, have prefixed to the said parties, — next to

(§ 5.)
The like, in
the county-
palatine of
Lancaster.

4
103
11 9.31

come, to be before the said lord the king, to hear judgment, &c.

(§ 6.)
The like, in
the county-
palatine of
Chester.

Afterwards, that is to say, at the session of *Chester*, held at *Chester* in the county of *Chester*, in the common-hall of pleas of the said county, upon — the — day of — in the — year of the reign of our sovereign lord *George* the Third, by the grace of God, of the united kingdom of *Great Britain* and *Ireland* king, defender of the faith, before the honourable — the said lord the king's chief-justice of *Chester*, and *Francis Burton* esquire, the said lord the king's other justice of the said county, being the next session for the said county after the within-written record was delivered to the said justices here, comes the within-named *A. B.* by — his attorney, and prays a writ of the said lord the king of causing to come before the said justices, upon — in this same session; twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the parties aforesaid here, &c. upon which same — before the same justices here, come as well the said *A. B.* by his attorney, as the within-named *C. D.* by — his attorney; and — esquire, sheriff of the said county, doth now return here the said writ of causing to come, to him in form aforesaid directed, together with a panel of the jurors' names to that writ annexed, in every thing served and executed; and the jurors thereupon impanelled, being required, none of them came; therefore that jury was respited until — next in this session, for defect of jurors, &c. Therefore it is commanded to the sheriff of the said county, that he then have the bodies of the jurors aforesaid, &c. the same day is given as well to the said *A. B.* as to the said *C. D.* here, &c. upon which — before the same justices here, come as well the said *A. B.* by his said attorney, as the said *C. D.* by his said attorney; and the said sheriff now returns here the said writ of having the bodies of the jurors aforesaid, to him in form aforesaid directed, together with a panel of the jurors' names to that writ annexed, in every thing served and executed; and the jurors thereupon impanelled, being required,

that is to say, *E. F., G. H., &c.* do come, and being chosen by ballot and sworn, according to the form of the statute in that case made and provided, upon their oath say, &c. Therefore the said justices prefix to the said parties, to be before the king himself at *Westminster*, on — then and there to hear judgment.

Afterwards, at the court of our lord the king of *Portmote* of the city of *Chester*, held at the same city, in the common-hall of pleas there, according to the use and custom of the same city hitherto obtained and used, from time whereof the memory of man is not to the contrary, upon — the — day of — in the — year of the reign of the same lord the king, before — esquire, mayor of the said city of *Chester*, being the next court of *Portmote* after this writ was delivered, here cometh the said *A. B.* by — his attorney, and prays the said lord the king's writ, to the sheriff of the said city of *Chester* to be directed, to cause to come before the said mayor, twelve free and lawful men of the said city, to try the said issue; and it is granted unto him, returnable here at the next court of *Portmote* of the said city of *Chester*, at the said city in the said common-hall of pleas, before the mayor of the said city for the time being, to be held by adjournment upon — the — day of — in the same year: At which next court of *Portmote* of the said city of *Chester*, held at the same city, in the said common-hall, upon — the said — day of — in the same year, before the same mayor of the said city here come as well the said *A. B.* by his said attorney, as the said *C. D.* by — his attorney; and — and — sheriffs of the said city of *Chester*, now return the said writ of *venire facias*, to them in form aforesaid directed, together with a panel of the jurors' names to that writ annexed, in every thing served and executed; and the jurors thereupon impanelled being called, to wit, *E. F., G. H., &c.* do come, who, to say the truth of the premises being chosen, tried and sworn, say upon their oath, &c. And hereupon the said — esquire, mayor of the said city of *Chester*, prefixes — next after — for the parties aforesaid to be before the

(§ 7.)

The like in the city of *Chester*.

king, himself at *Westminster*, then and there to hear judgment.

(§ 8.)

The like, on *non assumpsit*, by one of several defendants, where another has let judgment go by default.

Say upon their oath, that the said *C. D.* did undertake and promise, in manner and form as the said *A. B.* hath within complained against him; and they assess the damages of the said *A. B.* on occasion of the not performing the within-mentioned promises and undertakings, as well against the said *C. D.* as against the within-named *E. F.* over and above the costs and charges of the said *A. B.* by him about his suit in this behalf expended, to — *l.* and for those costs and charges to 40s.: Therefore, &c.

(§ 9.)

The like, on *non assumpsit infra sex annos.*

Say upon their oath, that the said *C. D.* did within six years next before the day of exhibiting the bill (or by original, of suing out the original writ) of the said *A. B.* against the said *C. D.* in this cause, undertake and promise, in manner and form as the said *A. B.* hath within complained against him; and they assess the damages, &c. (as before, p. 295).

(§ 10.)

The like against an executor, on *non assumpsit* by the testator.

Say upon their oath, that the within-named *E. F.* in his life-time did undertake and promise, in manner and form as the said *A. B.* hath within in that behalf alleged; and they assess the damages, &c.

(§ 11.)

The like, on *plene administravit.*

Say upon their oath, that the said *C. D.* on the day of exhibiting the within bill of the said *A. B.* (or by original, of suing out the original writ of the said *A. B.* in this behalf,) had divers goods and chattels, which were of the within-named *E. F.* at the time of his death, in the hands of him the said *C. D.* as executor of the last will and testament of the said *E. F.* to be administered, to the value of — *l.* as the said *A. B.* hath within in that behalf alleged; and they assess the damages, &c.

(§ 12.)

The like, on *nil debet.*

Say upon their oath, that the said *C. D.* doth owe to the said *A. B.* the within-mentioned sum of — *l.* in manner and form as the said *A. B.* hath within in that behalf alleged; and they assess the damages of the said *A. B.* on occasion of the detain-

ing the within debt, over and above his costs and charges by him about his suit in this behalf expended, to 1s. and for those costs and charges to 40s.: Therefore, &c.

Say upon their oath, that the within-mentioned writing obligatory is the deed of the said *C. D.* as the said *A. B.* hath within in that behalf alleged; and they assess the damages, &c. (as in the last).

(§ 13.)

The like, on
non est factum.

Say upon their oath, that the said *C. D.* did not pay to the said *A. B.* the within-mentioned sum of —*l.* or any part thereof, on the — day of — in the condition of the within writing obligatory mentioned, according to the form and effect of the said condition, in manner and form as the said *C. D.* hath within in that behalf alleged; and they assess the damages, &c.

(§ 14.)

The like, on
solvit ad diem.

Say upon their oath, that the said *C. D.* did not indemnify, &c. but wholly refused and neglected so to do, contrary to the tenor and effect of the condition of the within-mentioned writing obligatory, in manner and form as the said *A. B.* hath within in that behalf alleged; and they assess the damages of the said *A. B.* on occasion of the detaining the within debt, over and above his costs and charges by him about his suit in this behalf expended, to 1s. and for those costs and charges to 40s.; and they also assess the damages of the said *A. B.* on occasion of the breach of the said condition within assigned, according to the form of the statute in that case made and provided, to —*l.*: Therefore, &c.

(§ 15.)

The like, on
an indemnity
bond, where
damages are
assessed on the
stat. 8 & 9 W.
III. c. 11.

— as to the sum of —*l.* in the — count of the within declaration mentioned, parcel of the sum of —*l.* within demanded, upon their oath say, that the said *C. D.* doth owe the said sum of —*l.* to our said lord the king and the said *A. B.* who sues as aforesaid, in manner and form as the said *A. B.* who sues as aforesaid hath within complained against him; and they assess the costs and charges of the said *A. B.* who sues as aforesaid, by him about his suit in this behalf expended, to 40s. And as to the residue of the said sum of —*l.* in the other counts

(§ 16.)

The like, on a
penal statute,
where part is
found for the
defendant.

of the within declaration mentioned, the jurors aforesaid upon their oath aforesaid say, that the said *C. D.* doth not owe the same or any part thereof to our said lord the king and the said *A. B.* who sues as aforesaid, as the said *C. D.* hath within in that behalf alleged : Therefore, &c.

(§ 17.)
The like, on
not guilty, in
case.

Say upon their oath, that the said *C. D.* is guilty of the premises within laid to his charge, in manner and form as the said *A. B.* hath within complained against him ; and they assess the damages of the said *A. B.* on occasion thereof, over and above his costs and charges by him about his suit in this behalf expended, to ———/ and for those costs and charges to 40s. : Therefore, &c.

(§ 18.) *Postea for the plaintiff in Replevin, vide post, Replevin.*

(§ 19.)
The like, on
not guilty, in
trespass.

Say upon their oath, that the said *C. D.* is guilty of the several trespasses within laid to his charge, in manner and form as the said *A. B.* hath within complained against him ; and they assess the damages, &c.

(§ 20.)
The like, on
several issues,
in trespass and
assault.

— as to the first issue within joined between the parties aforesaid, upon their oath say, that the said *C. D.* is guilty of the several trespasses within laid to his charge, in manner and form as the said *A. B.* hath within complained against him : And as to the last issue within joined between the parties aforesaid, the jurors aforesaid upon their oath aforesaid say, that the said *C. D.* at the within-mentioned time when, &c. of his own wrong, and without any such cause as he the said *C. D.* hath within in that behalf alleged, assaulted, beat, bruised, wounded and ill-treated the said *A. B.* in manner and form as the said *A. B.* hath within complained against him ; and they assess the damages, &c.

(§ 21.)
The like, on
not guilty to a
new assign-
ment, where
several issues
are found for
the defendant.

— as to the first issue within joined between the parties aforesaid, upon their oath say, that the said *C. D.* is not guilty of the several trespasses within laid to his charge, in manner and form as the said *A. B.* hath within complained against him : And as to the second issue within joined between the par-

ties aforesaid, the jurors aforesaid upon their oath say, that the said *C. D.* at the within-mentioned time when, &c. did not of his own wrong, but for such cause as he the said *C. D.* hath within in his last plea in that behalf alleged, assault, beat, bruise, wound and ill-treat the said *A. B.* as in the first count of the within declaration is mentioned: And as to the last issue within joined between the parties aforesaid, the jurors aforesaid upon their oath say, that the said *C. D.* is guilty of the trespass within anew assigned, in manner and form as the said *A. B.* hath within complained against him; and they assess the damages of the said *A. B.* on occasion of the committing of the said last-mentioned trespass, over and above his costs and charges by him about his suit in this behalf expended, to —*l.* and for those costs and charges to 40*s.*: Therefore, &c.

Say upon their oath, that the said *C. D.* is guilty of the several trespasses within laid to his charge, in manner and form as the said *A. B.* hath within complained against him; and they assess the damages of the said *A. B.* against the said *C. D.* on occasion thereof, over and above his costs and charges by him about his suit in this behalf expended, to —*l.* and for those costs and charges to 40*s.* And the jurors aforesaid upon their oath aforesaid further say, that the said *E. F.* is not guilty of the several trespasses within laid to his charge, in manner and form as the said *A. B.* hath within complained against him: Therefore, &c.

(§ 22)
Thelike, where one defendant is found guilty, and another acquitted.

Postea for the plaintiff in Ejectment, vide post, Ejectment. (§ 23, 4, 5.)

— and the jurors of that jury being summoned also come, who to speak the truth of the matters within contained, were chosen tried and sworn; whereupon for certain causes, moving as well the said chief justice (or justices) as the within-named plaintiff and defendant, *E. F.* one of the jurors of the said jury, is withdrawn from the pannel thereof; and the residue of the jurors of that jury are altogether discharged from giving any verdict of and upon the premises within-mentioned, &c.

(§ 26.)
Postea, where a juror is withdrawn.

(§ 27.)
Postea for the
 defendant, on
 a nonsuit.

— and the jurors of that jury being summoned also come, who to speak the truth of the matters within contained, were chosen tried and sworn; and after evidence being given to them thereupon, they went from the bar of this court, to consider of their verdict to be given of and upon the premises; and after the said jury had considered thereof, and agreed among themselves, they returned to the said bar, to give their verdict in this behalf; upon which, the said *A. B.* being solemnly called, comes not, nor does he further prosecute his bill (or writ) against the said *C. D.* Therefore, &c.

(§ 28.)
 The like, on a
 verdict on *non-*
assumpsit.

Say upon their oath, that the said *C. D.* did not undertake or promise, in manner and form as the said *A. B.* hath within complained against him; Therefore, &c.

(§ 29.)
 The like, where
 one defendant
 had let judgment go by default.

Say upon their oath, that the said *C. D.* did not undertake or promise, in manner and form as the said *A. B.* hath within complained against him; and hereupon the said jurors are discharged from inquiring against the within-named *E. F.* what damages the said *A. B.* hath sustained, by reason of the premises within-mentioned: Therefore, &c.

(§ 30.)
 The like, on a
 plea of set-off.

Say upon their oath, that the said *A. B.* was and is indebted to the said *C. D.* in manner and form as the said *C. D.* hath within in pleading alleged: Therefore, &c.

(§ 31.)
 The like, for an
 executor, on
non assumpsit
 by the testator.

Say upon their oath, that the within-named *E. F.* in his life-time did not undertake or promise, in manner and form as the said *A. B.* hath within in that behalf alleged: Therefore, &c.

(§ 32.)
 The like, on
plene administravit.

Say upon their oath, that the said *C. D.* on the day of exhibiting the within bill of the said *A. B.* (or by original, of suing out the original writ of the said *A. B.* in this behalf,) had not any goods or chattels, which were of the within-named *E. F.* at the time of his death, in the hands of him the said *C. D.* as executor of the last will and testament of the said *E. F.* to be administered as the said *C. D.* hath within in pleading alleged: Therefore, &c.

Say upon their oath, that the said *C. D.* doth not owe to the said *A. B.* the within-mentioned sum of ~~100*l.*~~ or any part thereof, as the said *A. B.* hath within in that behalf alleged: Therefore, &c. (§ 33.)
The like, on *nil debet.*

Say upon their oath, that the within-mentioned writing obligatory is not the deed of the said *C. D.* as the said *A. B.* hath within in that behalf alleged: Therefore, &c. (§ 34.)
The like, on *non est factum.*

As to the first issue within joined between the parties aforesaid, upon their oath say, that the within-mentioned writing obligatory is the deed of the said *C. D.* as the said *A. B.* hath within in that behalf alleged: And as to the last issue within joined between the parties aforesaid, the jurors aforesaid upon their oath aforesaid say, that it was corruptly and against the form of the statute, &c. agreed between the said *A. B.* and the said *C. D.* in manner and form as the said *C. D.* hath within in pleading alleged: Therefore, &c. (§ 35.)
The like, on the statute of usury, and for the plaintiff on *non est factum.*

Say upon their oath, that the said *C. D.* is not guilty of the premises within laid to his charge, in manner and form as the said *A. B.* hath within complained against him: Therefore, &c. (§ 36.)
The like, on not guilty, in case.

Postea for the defendant in Replevin, vide post, (§ 37, 8.)
Replevin.

Say upon their oath, that the said *C. D.* is not guilty of the several trespasses within laid to his charge, in manner and form as the said *A. B.* hath within complained against him: Therefore, &c. (§ 39.)
The like, on not guilty, in trespass.

Postea for the defendant in Ejectment, vide post, (§ 40, 41.)
Ejectment.

Afterwards, that is to say, on the day and at the place within contained, before — one of the justices of our said lord the king, assigned to hold pleas in the court of our said lord the king before the king himself, and — one of the barons of our (§ 42.)
Demurrer to evidence, by the defendant, where the damages are as

sessed conditionally.

said lord the king, of his court of Exchequer at Westminster, and others their fellows, justices of our said lord the king, assigned to take the assizes in and for the county of —, according to the form of the statute in such case made and provided, come as well the within-named *A. B.* as the within-named *C. D.* by their respective attornies within-mentioned; and the jurors of the jury whereof mention is within made, being summoned, also come, and being chosen tried and sworn to say the truth of the matters within-contained, the said *A. B.* to prove and maintain the issue within joined on his part, shews in evidence to the jury aforesaid, by *E. F.* a witness duly sworn in that behalf, that, &c. (here state the evidence on the part of the plaintiff :) And the said *C. D.* says, that the aforesaid matters to the jurors aforesaid in form aforesaid shewn in evidence by the said *A. B.* are not sufficient in law to maintain the said issue within joined on the part of the said *A. B.* and that he the said *C. D.* to the matters aforesaid, in form aforesaid shewn in evidence, hath no necessity; nor is he obliged by the law of the land to answer; and this he is ready to verify, wherefore for want of sufficient matter in that behalf shewn in evidence to the jury aforesaid, the said *C. D.* prays judgment, and that the jury aforesaid may be discharged from giving any verdict upon the said issue, and that the said *A. B.* may be barred from having his said action against the said *C. D.* &c.

(§ 43.)
Joinder in demurrer.

And the said *A. B.* for that he hath shewn in evidence to the said jurors, sufficient matter in maintenance of the said issue, which matter the said *C. D.* doth not deny, nor in any manner answer thereto, prays judgment, and his damages by reason of the premises to be adjudged to him; &c. Whereupon it is told to the jurors aforesaid, that they shall inquire what damages the said *A. B.* has sustained; as well by reason of the matter shewn in evidence as aforesaid, as for his costs and charges by him about his suit in this behalf expended, in case it shall happen that judgment shall be given upon the evidence aforesaid for the said *A. B.* And the jurors aforesaid upon their oath aforesaid thereupon say, that if it shall happen that judgment

shall be given for the said *A. B.* upon the evidence aforesaid, then they assess the damages of the said *A. B.* by him sustained by reason of the matter shewn in evidence aforesaid, besides his costs and charges by him about his suit in this behalf expended, to ———. and for those costs and charges to ———. And thereupon the said jurors, by the assent of the said parties, are discharged from giving any further verdict upon the premises :

Afterwards, that is to say, on the day and at the place, within-contained, &c. (as in the last, *mutatis mutandis*, to the prayer at the end of the demurrer, which is as follows :) prays judgment, and that the jury aforesaid may be discharged from giving any verdict upon the said issue, and that his damages by reason of the premises within-mentioned may be adjudged to him, &c.

(§ 44.)

The like, by the plaintiff, where the jury are discharged.

And the said *C. D.* for that he hath shewn in evidence to the jury aforesaid, sufficient matter to maintain the said issue within joined, on the part of the said *C. D.* and which he is ready to verify ; and forasmuch as the said *A. B.* doth not deny, nor in any manner answer the said matter, prays judgment, and that the said *A. B.* may be barred from having his aforesaid action against him, and that the jury aforesaid may be discharged from giving their verdict upon the said issue, &c. : Wherefore let the jury aforesaid be discharged by the court here, by the assent of the parties, from giving any verdict thereupon.

(§ 45.)

Joinder in demurrer.

to wit. *Be it remembered*, that in the term of ——— in the ——— year of the reign of our sovereign lord *George* the third, now king of the united kingdom of *Great Britain* and *Ireland*, &c. came *A. B.* by ——— his attorney, into the court of our said lord the king before the king himself at *Westminster*, and impleaded *C. D.* in a certain plea of trespass on the case upon promises ; on which the said *A. B.* declared against him, that, &c. (set out,

(§ 46.)

Bill of exceptions.

the declaration and other pleadings, and then proceed as follows :) And thereupon issue was joined between the said *A. B.* and the said *C. D.* And afterwards, to wit, at the sittings of *nisi prius* held at the *Guildhall* of the city of *London* aforesaid, in and for the said city, on — the — day of — in the — year of the reign of our said lord the king, before the right honourable *Edward Lord Ellenborough*, chief justice of our said lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself, *Ewan Law*, Esquire, being associated unto the said chief-justice, according to the form of the statute in such case made and provided, the aforesaid issue so joined between the said parties aforesaid, came on to be tried by a jury of the city of *London* aforesaid, for that purpose duly impanelled, that is to say, *E. F.* of — and *G. H.* of — &c. good and lawful men of the said city of *London* : At which day, came there as well the said *A. B.* as the said *C. D.* by their respective attornies aforesaid : and the jurors of the jury aforesaid, impanelled to try the said issue, being called, also came, and were then and there in due manner chosen and sworn to try the same issue ; and upon the trial of that issue, the counsel learned in the law for the said *A. B.* to maintain and prove the said issue on his part, gave in evidence that, &c. (here set out the evidence on the part of the plaintiff, and afterwards that on the part of the defendant, and then proceed as follows :) Whereupon the said counsel for the said *C. D.* did then and there insist before the said chief-justice, on the behalf of the said *C. D.* that the said several matters so produced and given in evidence on the part of the said *C. D.* as aforesaid, were sufficient, and ought to be admitted and allowed as decisive evidence, to entitle the said *C. D.* to a verdict, and to bar the said *A. B.* of his action aforesaid ; and the said counsel for the said *C. D.* did then and there pray the said chief justice, to admit and allow the said matters so produced and given in evidence for the said *C. D.* to be conclusive evidence in favour of the said *C. D.* to entitle him to a verdict in this cause, and to bar the said *A. B.* of his action aforesaid : But to this the counsel learned in the law of the said *A. B.* did then

and there insist before the said chief-justice, that the same were not sufficient, nor ought to be admitted or allowed to entitle the said *C. D.* to a verdict, or to bar the said *A. B.* of his action aforesaid; and the said chief-justice did then and there declare and deliver his opinion to the jury aforesaid, that the said several matters so produced and given in evidence on the part of the said *C. D.* were not sufficient to bar the said *A. B.* of his action aforesaid, and with that direction left the same to the said jury; and the jury aforesaid then and there gave their verdict for the said *A. B.* and — *l.* damages; whereupon the said counsel for the said *C. D.* did then and there, on the behalf of the said *C. D.* except to the aforesaid opinion of the said chief-justice, and insisted on the said several matters as an absolute bar to the said action: And inasmuch as the said several matters so produced and given in evidence on the part of the said *C. D.* and by his counsel aforesaid objected and insisted on as a bar to the action aforesaid, do not appear, by the record of the verdict aforesaid, the said counsel for the said *C. D.* did then and there propose their aforesaid exception to the opinion of the said chief-justice, and requested him to put his seal to this bill of exceptions, containing the said several matters so produced and given in evidence on the part of the said *C. D.* as aforesaid, according to the form of the statute in such case made and provided; and thereupon the said chief-justice, at the request of the said counsel for the said *C. D.* did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, on the said — day of — in the — year of the reign of his present majesty.

JUDGMENTS.*

In COVENANT, CASE, and TRESPASS, the Judgment is, as in ASSUMPSIT, for DAMAGES and COSTS.

(§ 1.)
Judgment by
nil dicit, in *as-*
sumpsit by bill,
of the same
term with the
declaration.

As yet of — term (the term of which inter-
locutory judgment is signed), in the —
year of the reign of king *George the Third*.
Witness *Edward Lord Ellenborough*.
Way.

— to wit. *A. B.* puts in his place *E. F.* his
attorney, against *C. D.* in a plea of trespass on the
case upon promises.

— to wit. The said *C. D.* in person, (or if he
appeared by attorney; “The said *C. D.* puts in his
place *G. H.* his attorney,”) at the suit of the said
A. B. in the plea aforesaid.

— to wit. *Be it remembered*, that on — next
after — in this same term, before our lord the
king at *Westminster*, comes *A. B.* by *E. F.* his at-
torney, and brings into the court of our said lord the
king before the king himself now here, his certain
bill against *C. D.* being in the custody of the mar-
shal of the marshalsea of our said lord the king be-

* These, with the addition of a few important forms at sections
12, 34, 42, 48, 78, are the same as those selected by Mr. Tidd.

fore the king himself, of a plea of trespass on the case upon promises; and there are pledges for the prosecution thereof, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, that is to say: — to wit. *A. B.* complains of *C. D.* being in the custody, &c. (here copy the declaration to the end, omitting the pledges, and proceed on a new line as follows:)

And the said *C. D.* in his proper person (or by *G. H.* his attorney), comes and defends the wrong and injury when, &c. and says nothing in bar or preclusion of the said action of the said *A. B.* whereby the said *A. B.* remains therein undefended against the said *C. D.* wherefore the said *A. B.* ought to recover against the said *C. D.* his damages on occasion of the premises: But because it is unknown to the court of our said lord the king now here, what damages the said *A. B.* hath sustained by means of the premises; the sheriff is commanded, that by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the said *A. B.* hath sustained, as well by means of the premises, as for his costs and charges by him about his suit in this behalf expended; and that he send the inquisition which he shall thereupon take, to our said lord the king at *Westminster*, on — next after — under his seal, and the seals of those by whose oath he shall take that inquisition, together with the writ of our said lord the king to him thereupon directed; the same day is given to the said *A. B.* at the same place: At which day, before our said lord the king at *Westminster*, comes the said *A. B.* by his attorney aforesaid; and the sheriff, to wit, — esquire, sheriff of the said county of —, now here returns a certain inquisition indented, taken before him at — in the county aforesaid, on — the — day of — in the — year of the reign of our said lord the now king, by the oath of twelve good and lawful men of his bailiwick; by which it is found; that the said *A. B.* hath sustained damages by means of the premises to — *l.* over and above his costs and charges by him about his suit in this behalf expended, and for those costs and charges

Interlocutory
judgment.

Judgment
signed the —
day of —
18—.

to — s. Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* his damages aforesaid, by the said inquisition above found, and also — for his said costs and charges, by the court of our said lord the king now here adjudged of increase to the said *A. B.* and with his assent; which said damages costs and charges in the whole amount to — *l.* And the said *C. D.* in mercy, &c.

Mercy.

(§ 2.)
The like, of a
different term,
with an im-
parlance.

(Entry of warrants of attorney, as before.)
— to wit. *Be it remembered*, that in — term last past, before our lord the king at *Westminster*, came *A. B.* by *E. F.* his attorney, and brought into the court of our said lord the king before the king himself then there, his certain bill against *C. D.* being in the custody of the marshal of the marshalsea of our said lord the king before the king himself, of a plea of trespass on the case upon promises; and there are pledges for the prosecution thereof, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, that is to say: — to wit. (Here copy the declaration to the end, omitting the pledges, and proceed on a new line as follows:)

And now at this day, that is to say, on — next after — in this same term, until which day the said *C. D.* had leave to imparl to the said bill, and then to answer the same, &c. before our said lord the king at *Westminster* come as well the said *A. B.* by his attorney aforesaid, as the said *C. D.* in his proper person (or by *G. H.* his attorney); and the said *C. D.* defends the wrong and injury, when, &c. and says nothing in bar or preclusion, &c. (as before).

(§ 3.)
The like, by
original.

(Entry of warrants of attorney, as before.)
— to wit. *C. D.* was attached to answer *A. B.* &c. (here copy the declaration *verbatim*, and proceed on a new line as follows:)

And the said *C. D.* in his proper person (or by *G. H.* his attorney), comes and defends the wrong and injury when, &c. and says nothing in bar or preclusion, &c. (as before, making the writ of inquiry returnable on a general return-day).

And the said *C. D.* in his proper person, comes and defends the wrong and injury when, &c. and the said *E. F.* comes not: And hereupon the said *A. B.* gives the court of our lord the king now here to understand and be informed, that after the issuing of the original writ in this cause, and after the last continuance of the plea aforesaid, and before this day, to wit, on — the said *E. F.* died, to wit, at — and the said *C. D.* there survived him; which the said *C. D.* doth not deny: And the said *C. D.* says nothing in bar or preclusion, &c. (as before).

(§ 4.)

The like, where one of the defendants died after declaration, and before interlocutory judgment.

And the said *C. D.* in his proper person, comes and defends the wrong and injury when, &c. and says nothing in bar or preclusion of the said action of the said *A. B.* whereby the said *A. B.* remains therein undefended against the said *C. D.* wherefore the said *A. B.* ought to recover against the said *C. D.* his damages on occasion of the premises: But because it is unknown to the court of our said lord the king now here, what damages the said *A. B.* hath sustained by means of the premises aforesaid; it is commanded to the chancellor of the said county-palatine of *Lancaster*, that by the writ of our said lord the king, under the seal of the said county-palatine to be duly made, and directed to the sheriff of the said county-palatine, he command the said sheriff, that by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the said *A. B.* hath sustained, as well by means of the premises, as for his costs and charges by him about his suit in this behalf expended; and that the inquisition which the said sheriff shall thereupon take, he make known to the said chancellor, under his seal, and the seals of those by whose oath he shall take that inquisition, together with the names of the persons by whose oath he shall take the same; so that the said chancellor may certify the same to our said lord the king at *Westminster*, on — next after — together with the name of the said sheriff, and the writ of our said lord the king to the said chancellor in that behalf directed; the same day is given to the said *A. B.* at the same place: At which day, before our said lord the king at *Westminster*, comes the said *A. B.* by his said attorney;

(§ 5.)

The like, and award of inquiry into a county-palatine.

and the said chancellor now here certifies a certain inquisition indented, taken before the said sheriff, at — in the said county, on the — day of — in the — year of the reign of our said lord the now king, by the oath of twelve good and lawful men of the said sheriff's bailiwick; by which it is found, &c. (as before, p. 311.)

(§ 6.)

The like, with a remittitur of part of the damages, after the return of the inquiry.

Judgment signed, &c.

Mercy.

(As before, p. 311, &c. to the end of the sheriff's return on the writ of inquiry, and then as follows :) And hereupon the said *A. B.* freely here in court remits to the said *C. D.* the sum of — *l.* parcel of the damages costs and charges aforesaid, by the said inquisition in form aforesaid found; and prays judgment for the residue of those damages costs and charges, together with his further costs and charges by him about his suit in this behalf expended: Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* the sum of — *l.* residue of the damages costs and charges aforesaid, by the said inquisition above found, and also — *l.* for his further costs and charges aforesaid, by the court of our said lord the king now here adjudged of increase to the said *A. B.* and with his assent; which said residue of the damages costs and charges by the said inquisition above found, together with the said further costs and charges so adjudged of increase, amount in the whole to — *l.* And the said *C. D.* in mercy, &c. And let the said *C. D.* be acquitted of the said sum of — *l.* parcel, &c. so remitted by the said *A. B.* as aforesaid, &c.

(§ 7.)

The like, with a suggestion of the death of one of the plaintiffs, at the return of the inquiry.

(To the end of the award of the inquiry, and then as follows :) At which day, before our said lord the king at *Westminster*, comes the said *A. B.* by his attorney aforesaid; and the sheriff, &c. (as before, p. 311. to the end of the inquisition;) and the said *E. F.* at the same day, being solemnly demanded, comes not: And hereupon the said *A. B.* gives the court of our said lord the king now here to understand and be informed, that since the last continuance of this plea, and before this day, to wit, on — the said *E. F.* died, to wit, at — and the said *A. B.* there survived him; and because this is not denied, therefore let no further proceedings be had

at the suit of the said *E. F.*; and upon this the said *A. B.* prays judgment against the said *C. D.* for the damages costs and charges aforesaid: Therefore it is considered, &c. (as before, p. 312.)

And the said *C. D.* in his proper person, comes and defends the wrong and injury when, &c. and says nothing in bar or preclusion, &c. (as before, p. 311, to the final judgment, which is as follows:) Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* executor (or administrator) as aforesaid, his damages aforesaid by the said inquisition above found, and also — *l.* for his said costs and charges, by the court of our said lord the king now here adjudged of increase to the said *A. B.* and with his assent; which said damages costs and charges in the whole amount to — *l.* to be levied of the goods and chattels which were of the said *E. F.* at the time of his death, in the hands of the said *C. D.* as executor (or administrator) as aforesaid to be administered, if he hath so much thereof in his hands to be administered, and if he hath not so much thereof in his hands to be administered, then — *l.* parcel of the damages aforesaid, being for the costs and charges aforesaid, to be levied of the proper goods and chattels of the said *C. D.* And the said *C. D.* in mercy, &c.

(§ 8.)

The like, against an executor or administrator. Judgment signed, &c.

Mercy.

And the said *C. D.* in his proper person, comes and defends the wrong and injury when, &c. and says nothing in bar or preclusion of the said action of the said *A. B.* whereby the said *A. B.* remains therein undefended against the said *C. D.* wherefore the said *A. B.* ought to recover against the said *C. D.* his damages on occasion of the premises: And hereupon the said *A. B.* freely here in court remits to the said *C. D.* all damages sustained by him the said *A. B.* on occasion of the not performing the several promises and undertakings in the — last counts of the said declaration mentioned; and he prays judgment, and his damages by him sustained on occasion of the not performing of the said promise and undertaking in the said first count mentioned, to be adjudged to him, &c. And because it is suggested and proved, and manifestly appears to

(§ 9.)

The like, where the damages are assessed by the court.

Judgment
signed, &c.

Mercy.

the court here, that the said *A. B.* hath sustained damages on occasion of the not performing of the said last-mentioned promise and undertaking, to the sum of — *l.* besides his costs and charges, by him about his suit in this behalf expended: Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* his damages aforesaid, to the said sum of — *l.* and also — *l.* for his said costs and charges, by the court of our said lord the king now here adjudged to the said *A. B.* and with his assent; which said damages costs and charges in the whole amount to — *l.* And the said *C. D.* in mercy, &c. And let the said *C. D.* be acquitted of the damages so remitted as aforesaid, &c.

(§ 10.)
Judgment by
nil dicit, in debt
on a *mutuatus*
by bill, of the
same term with
the declara-
tion.

As yet of — term, &c.
— to wit. *A. B.* puts in his place *E. F.* his attorney, against *C. D.* in a plea of debt.

— to wit. The said *C. D.* in person, (or if he appeared by attorney; "The said *C. D.* puts in his place *G. H.* his attorney,") at the suit of the said *A. B.* in the plea aforesaid.

— to wit. *Be it remembered*, that on — next after — in this same term, before our lord the king at *Westminster*, comes *A. B.* by *E. F.* his attorney, and brings into the court of our said lord the king before the king himself now here, his certain bill against *C. D.* being in the custody of the marshal of the marshalsea of our said lord the king before the king himself, of a plea of debt; and there are pledges for the prosecution thereof, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, that is to say: — to wit, *A. B.* complains of *C. D.* being in the custody of the marshal of the marshalsea of our lord the now king before the king himself, of a plea that he render to the said *A. B.* the sum of — *l.* of lawful money of *Great Britain*, which he owes to and unjustly detains from him; for that whereas the said *C. D.* on the — day of — in the year of our Lord 18— at —, had borrowed of the said *A. B.* the said sum of — *l.* above demanded, to be paid to the said *A. B.* when he the said *C. D.* should be

thereto afterwards requested: Yet the said *C. D.* (although often requested, &c.) hath not as yet paid the said sum of ———*l.* above demanded, or any part thereof, to the said *A. B.* but to pay the same or any part thereof to the said *A. B.* he the said *C. D.* hath hitherto wholly refused, and still doth refuse; to the damage of the said *A. B.* of 10*l.* and therefore he brings his suit, &c.

And the said *C. D.* in his proper person (or by *G. H.* his attorney), comes and defends the wrong and injury when, &c. and says nothing in bar or preclusion of the said action of the said *A. B.* whereby the said *A. B.* remains therein undefended against the said *C. D.* Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* his said debt, and also ———*s.* for his damages which he hath sustained, as well on occasion of the detaining the said debt, as for his costs and charges by him about his suit in this behalf expended, by the court of our said lord the king now here adjudged to the said *A. B.* and with his assent: And the said *C. D.* in mercy, &c.

Judgment
signed, &c.

Mercy.

(Entry of warrants of attorney and memorandum as in the last; declaration as follows:)

(§ 11.)
The like, in
debt on bond.

—— to wit. *A. B.* complains of *C. D.* being in the custody of the marshal of the marshalsea of our lord the now king before the king himself, of a plea that he render to the said *A. B.* the sum of ———*l.* of good and lawful money of *Great Britain*, which he owes to and unjustly detains from him; for that whereas the said *C. D.* on the ——— day of ——— in the year of our Lord 18— at ——— by his certain writing obligatory sealed with the seal of the said *C. D.* and now shewn to the court of our said lord the king before the king himself here; the date whereof is the same day and year aforesaid, acknowledged himself to be held and firmly bound unto the said *A. B.* in the said sum of ———*l.* above demanded, to be paid to the said *A. B.* when he the said *C. D.* should be thereto afterwards requested: Yet the said *C. D.* (although often requested, &c.) hath not as yet paid the said sum of ———*l.* above demand-

ed, or any part thereof, to the said *A. B.* but to pay the same or any part thereof to the said *A. B.* he the said *C. D.* hath hitherto wholly refused, and still doth refuse; to the damage of the said *A. B.* of ——. and therefore he brings his suit, &c.

And the said *C. D.* in his proper person, (or by *G. H.* his attorney,) comes and defends the wrong and injury when, &c. and says nothing in bar or preclusion, &c. (as in the last.)

(§ 12.)

Suggestion of breaches in debt on bond, after judgment by default, on the stat. 8 & 9 W. III. c. 11. § 8. with award of inquiry and return. See post, 321.

(After the entry of the judgment, proceed as follows:)

And hereupon the said *A. B.* according to the form of the statute in such case made and provided, says that the said writing obligatory, whereon the said judgment was so recovered against the said *C. D.* as aforesaid, was made and given by him the said *C. D.* under and subject to a certain condition thereto subscribed, whereby, after reciting, &c. (stating the recital, if any, preceding the condition of the bond,) it was declared, that if, &c. (reciting the condition): And hereupon the said *A. B.* prays the writ of our said lord the king, to be directed to the sheriff of —, and to the right honourable *Edward* lord *Ellenborough*, his Majesty's chief-justice, assigned to hold pleas in the court of our said lord the king before the king himself (or "to his Majesty's justices assigned to take the assizes in the county of —") commanding the said sheriff, that he cause to come before the said chief-justice (or "justices of assize,") on — the — day of — next; at — in the county of — twelve, &c. by whom, &c. and who neither, &c. to inquire of the truth of the said breaches above assigned, and to assess the damages thereby sustained by the said *A. B.*; and also that it be commanded in the said writ to the said chief-justice, (or "justices of assize," that he (or "they") make a return thereof to the said court of our said lord the king before the king himself at *Westminster*, on — next after —; and it is granted to him, &c. the same day is given to the said *A. B.* at the same place. At which day, before our said lord the king at *Westminster*, comes

the said *A. B.* by his attorney aforesaid, and the said chief-justice (or "justices of assize,") now here returns (or "return") a certain inquisition indented, taken before him (or "them,") at — in the county of — on — the — day of — in the — year of the reign of our said lord the king, upon the oath of twelve good and lawful men of the same county, by which it is found, &c. (reciting the inquisition,) and that the said *A. B.* hath sustained damages, by reason of the aforesaid breach of the said condition of the said writing obligatory, to the sum of —*l.*

(After the entry of the judgment, proceed as follows :)

The like, in debt on bail-bond, in C. P.

But because, according to the form of the statute in such case made and provided, a jury ought to inquire of the truth of the said breach of the said condition of the said writing obligatory above assigned, and to assess the damages that the said *A. B.* has sustained thereby, and the said *A. B.* having prayed our writ for that purpose, therefore the sheriff of the said county is commanded, to summon twelve good and lawful men of his county, to appear before — chief-justice of our said lord the king of the bench at *Westminster*, (or "before his majesty's justices assigned to take the assizes in the county of —,") on — the — day of — at — in the said county, to inquire upon their oath of the truth of the said breach, and to assess the damages which the said *A. B.* hath sustained thereby : And the said chief-justice is (or "justices of assize are") commanded, that he (or "they") make return of the said writ, and certify the inquisition before him (or "them") taken, to his majesty's justices at *Westminster*, in — together with the names of those by whose oath such inquisition shall be taken, and the writ of our said lord the king to him (or "them") thereupon directed ; the same day is given to the said *A. B.* here. At which day, comes here the said *A. B.* by his attorney aforesaid, and the said chief-justice (or "justices of assize") now here returns (or "return") a certain inquisition indented, taken before him (or "them") on — the

— day of — in the — year of the reign of our said lord the king, at — in the said county, upon the oath of twelve good and lawful men of the said county, by which it is found that the said *C.D.* did not appear, &c. (as in the inquisition), and that the said *A. B.* hath sustained damages, by the aforesaid breach of the said condition of the said writing obligatory, besides his costs and charges by him about his suit in this behalf expended, to — l.

The like, in debt on annuity-bond, in the Exchequer; with entry of satisfaction.

(After the entry of the judgment, proceed as follows:)

And hereupon the said *A. B.* according to the form of the statute in such case made and provided, says, &c. (here copy the suggestion to the end, and proceed as follows:.) And the said *A. B.* having prayed the writ of our said lord the king to inquire of the truth of the said breach above assigned, and to assess the damages which the said *A. B.* has sustained thereby; therefore according to the form of the statute in such case made and provided, the sheriff of — is commanded, that he cause to come before the right honourable Sir *Archibald Macdonald*, knight, chief baron of his majesty's court of Exchequer, (or "before his majesty's justices assigned to take the assizes in the county of —") at — in the county of —, on — the — day of — instant, twelve honest and lawful men of his bailiwick, to inquire diligently on their oath of the truth of the said breach above assigned, and to assess the damages which the said *A. B.* hath sustained thereby; and the said chief baron is (or "justices of assize are") commanded that he (or "they") certify the inquisition to be before him (or "them") taken, to his said majesty's court before the barons of his said Exchequer at *Westminster*, on the — day of — instant, together with the names of those by whose oath such inquisition shall be taken; and the writ of our said lord the king to him thereupon directed; the same day is given to the said *A. B.* at the same place: At which day, before the barons of his said majesty's Exchequer at *Westminster* aforesaid, comes the said *A. B.* by

his attorney aforesaid, and the said chief-baron (or "justices of assize") now here returns (or "return") a certain inquisition indented, taken before him (or "them") at — in the county of — aforesaid, on — the — day of — in the — year of the reign of our said lord the king, upon the oath of twelve honest and lawful men of the said county, by which it is found, that after the making of the said writing obligatory, &c. (stating the inquisition), and that the said *A. B.* hath sustained damages, by reason of the aforesaid breach of the said condition of the said writing obligatory, to the sum of — *l.* And hereupon the said *A. B.* by his attorney aforesaid, acknowledgeth himself to be satisfied by the said *C. D.* of the damages aforesaid, in form aforesaid assessed, and also his damages by him sustained on occasion of the detention of the said debt: Therefore let the said *C. D.* be acquitted of the several damages aforesaid, and all further proceedings for the recovery thereof be stayed, &c.

Mode of entering judgment, so as to secure the costs of the inquisition, where breaches are suggested under 8 & 9 W. 3. c. 11. s. 8. after judgment by default or on demurrer.

2nd. Wms. Saund. 187. c. 1st, 58.

N.B. This method in all such cases appears preferable to the foregoing.

— whereupon all and singular the premises being seen and by the court here more fully understood, and mature deliberation being thereupon had, for that it appears to the court here that the plea by the said — in form aforesaid pleaded is not sufficient in law to bar the said — from having his said action thereof maintained against the said — (thus on demurrer; on default, as before — "says nothing in bar or preclusion of the said action of the said —, whereby the said — remains unde-

Judgment
signed, &c.

Mercy.

about his suit in this behalf: Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* the said sum of — *l.* in the said last count of the said declaration mentioned, parcel, &c. and also — *l.* for his said costs and charges, by the court of our said lord the king now here adjudged to the said *A. B.* and with his assent, according to the form of the statute in such case made and provided; and the said *C. D.* in mercy, &c. And let the said *C. D.* be acquitted of the said offences in the said first and second counts of the said declaration mentioned, and go thereof without date, &c.

(§ 13, 14.)

For judgments by default in Ejectment, vide post, Ejectment.

(§ 15.)

Judgment by
non sum informatus, in *assumpsit* by bill, of the same term with the declaration.

As yet of — term, &c.
— to wit. *A. B.* puts in his place *E. F.* his attorney, against *C. D.* in a plea of trespass on the case upon promises.

— to wit. The said *C. D.* puts in his place *G. H.* his attorney, at the suit of the said *A. B.* in the plea aforesaid.

— to wit. *Be it remembered, &c.* (as before, p. 310.)

And the said *C. D.* by *G. H.* his attorney, comes and defends the wrong and injury when, &c. and the said *A. B.* prays that the said *C. D.* may answer his said declaration; whereupon the said attorney of the said *C. D.* says that he is not informed by the said *C. D.* of any answer to be given for him to the said *A. B.* in the premises, nor does he say any thing in bar or preclusion of the said action of the said *A. B.* whereby the said *A. B.* remains therein undefended against the said *C. D.* wherefore the said *A. B.* ought to recover against the said *C. D.* his damages on occasion of the pre-

misses: But because it is unknown, &c. (as before, p. 311, 12.)

(Entry of warrants of attorney and memorandum, &c. as before, p. 316, 17. making the defendant appear by attorney, and not in person.) (§ 16.)
The H.c. is added.

And the said C. D. by G. H. his attorney, comes and defends the wrong and injury when, &c. and the said A. B. prays that the said C. D. may answer his said declaration; whereupon the said attorney of the said C. D. says that he is not informed by the said C. D. of any answer to be given for him to the said A. B. in the premises, nor doth he say any thing in bar or preclusion of the said action of the said A. B. whereby the said A. B. remains therein undefended against the said C. D.: Therefore it is considered, that the said A. B. do recover against the said C. D. his said debt, &c. (as before, p. 317.) Judgment signed, &c.

As yet of — term, &c. (§ 17.)

(Entry of warrants of attorney and memorandum, &c. as before, p. 310, 11.) Judgment by cognovit actionem et damna, in assumpsit by bill, of the same term with the declaration.

And the said C. D. by G. H. his attorney, comes and defends the wrong and injury when, &c. and says that he cannot deny the action of the said A. B. nor but that he the said C. D. did undertake and promise, in manner and form as the said A. B. hath above thereof complained against him; nor but that the said A. B. hath sustained damages on occasion of the not performing of the said several promises and undertakings in the said declaration mentioned, to — l. as by the said declaration is above supposed: And hereupon the said A. B. prays judgment, and his damages so acknowledged, together with his costs and charges by him about his suit in this behalf expended, to be adjudged to him, &c.: Therefore it is considered, that the said A. B. do recover against the said C. D. his da- Judgment signed, &c.

mages aforesaid to, — *l.* in form aforesaid acknowledged, and also — *l.* for his said costs and charges by the court of our said lord the king now here adjudged to the said *A. B.* and with his assent; which said damages costs and charges in the whole amount to — *l.* And the said *C. D.* in mercy, &c.

Mercy.

Where the judgment by *cognovit* is of a different term, or by original, the form varies as by *nil dicit*, for which *vide ante*, p. 312.

(§ 18.)

The like,
against an ex-
ecutor or ad-
ministrator.

Judgment
signed, &c.

And the said *C. D.* by *G. H.* his attorney, comes and defends the wrong and injury when, &c. and says that he cannot deny the action of the said *A. B.* nor but that the said *E. F.* in his life-time did undertake and promise, in manner and form as the said *A. B.* hath above in that behalf alleged; nor but that the said *A. B.* hath sustained damages, &c. (as in the last, to the judgment, which is as follows.) Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* executor (or administrator) as aforesaid, his damages aforesaid to — *l.* in form aforesaid acknowledged, and also — *l.* for his said costs and charges, by the court of our said lord the king now here adjudged to the said *A. B.* and with his assent; which said damages costs and charges in the whole amount to — *l.* to be levied of the goods and chattels which were of the said *E. F.* at the time of his death, in the hands of the said *C. D.* as executor (or administrator), as aforesaid to be administered, if he hath so much thereof in his hands to be administered, and if he hath not so much thereof in his hands to be administered, then — *l.* parcel of the damages aforesaid, being for the costs and charges aforesaid, to be levied of the proper goods and chattels of the said *C. D.*: And the said *C. D.* in mercy, &c.

Mercy.

(§ 19.)

Judgment of
assets in futuro,
on a plea of
plene adminis-
travit in as-
sumpsit.

(To the end of the plea, and then as follows.) And hereupon the said *A. B.* inasmuch as the said *C. D.* does not deny the action of the said *A. B.* nor but that the said *E. F.* in his life-time did undertake and promise, in manner and form as the said *A. B.* hath above in that behalf alleged; and inasmuch as the said *A. B.* cannot deny but that the said *C. D.*

hath not any goods or chattels which were of the said *E. F.* at the time of his death, in his hands to be administered, in manner and form as the said *C. D.* hath above in his said plea in that behalf alleged, prays judgment, and his damages by him sustained on occasion of the not performing of the said several promises and undertakings in the said declaration mentioned, to be adjudged to him; to be levied of the goods and chattels which were of the said *E. F.* at the time of his death, and which after final judgment in this respect, shall come to the hands of the said *C. D.* to be administered: Therefore it is considered, that the said *A. B.* recover against the said *C. D.* his damages by him sustained on occasion of the premises aforesaid, to be levied in form aforesaid: But because it is unknown, &c. (award of inquiry and return as before, p. 311. making no mention of costs, and final judgment as follows:.) Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* his damages aforesaid, by the inquisition aforesaid above found, to be levied of the goods and chattels which were of the said *E. F.* at the time of his death, and which shall hereafter come to the hands of the said *C. D.* to be administered, &c.

Judgment
signed, &c.

(To the end of the plea, and then as follows:.) And hereupon the said *A. B.* inasmuch as the said *C. D.* does not deny the action of the said *A. B.* nor but that the said *E. F.* in his life-time did undertake, &c. (as in the last,) and inasmuch as the said *A. B.* cannot deny but that the said *C. D.* hath not any goods or chattels which were of the said *E. F.* at the time of his death, in his hands to be administered, except the said goods and chattels to the value of — / — as aforesaid, prays judgment, and his damages by him sustained on occasion of the not performing of the said several promises and undertakings in the said declaration mentioned, to be adjudged to him; to be levied, as to — / — part thereof, of the said goods and chattels so remaining in the hands of the said *C. D.* unadministered as aforesaid, and as to the residue thereof, to be levied of other goods and chattels which were of the said *E. F.* at the time of his death, and which after final

(§ 20.)

The like, of assets acknowledged in part, and for the residue of assets in futuro, on a plea of plene administravit, prater in assumpsit; see post, sect. 42.

Judgment
signed, &c.

judgment in this respect shall come to the hands of the said *C. D.* to be administered: Therefore it is considered, that the said *A. B.* recover against the said *C. D.* his damages by him sustained on occasion of the premises, to be levied in form aforesaid: But because it is unknown, &c. (award of inquiry and return as in the last, and final judgment as follows:) Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* the said damages by the inquisition aforesaid above found, to be levied, as to the said — *l.* part thereof, of the goods and chattels so remaining in the hands of the said *C. D.* unadministered as aforesaid, and as to the residue thereof, to be levied of other goods and chattels of the said *E. F.* at the time of his death, and which shall hereafter come to the hands of the said *C. D.* to be administered, &c.

(§ 21.)
The like,
against the
lands and
chattels of a
defendant dis-
charged under
an insolvent
act.

insolvent
act.

VERB

(1st)
The like, &c.
insolvent
act.
Judgment
signed, &c.

And the said *A. B.* forasmuch as the said *C. D.* doth not deny the said action of the said *A. B.* nor but that he the said *C. D.* did undertake and promise, in manner and form as the said *A. B.* hath above thereof complained against him, nor but that he the said *A. B.* ought to recover his damages by reason of the non-performance of the said several promises and undertakings in the said declaration mentioned, against the said *C. D.* and forasmuch as the said *A. B.* cannot deny the said several allegations of the said *C. D.* contained in his said plea, but admits the same to be true, he the said *A. B.* prays judgment, and his damages by him sustained on occasion of the not performing of his said several promises and undertakings to be adjudged to him, to be levied not on the person of the said *C. D.* but on his lands goods and chattels according to the form of the statute in such case made and provided: Whereupon it is considered by the court here, that the said *A. B.* ought to recover his damages on occasion of the not performing of the said several promises and undertakings against the said *C. D.* to be levied in form aforesaid: But because it is unknown, &c. (award of inquiry and return as before, up to final judgment as follows) Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* his damages aforesaid,

by the said inquisition above found, and also — *l.* for his said costs and charges, by the court of our said lord the king now here adjudged of increase to the said *A. B.* and with his assent; which said damages costs and charges in the whole amount to — *l.* to be levied not on the person of the said *C. D.* but on his lands goods and chattels, according to the forth of the statute in such case made and provided: And the said *C. D.* in mercy, &c.

Mercy.

(To the end of the issue, and then as follows:)
At which day, before our said lord the king at *Westminster*, come as well the said *A. B.* as the said *C. D.* by their respective attornies aforesaid; and hereupon the said *C. D.* by his said attorney, relinquishing his said plea by him above pleaded, says that he cannot deny the action of the said *A. B.* nor but that he the said *C. D.* did undertake, &c. (as before p. 325.)

(§ 22.)

Judgment by *cognovit actionem* in *assumpsit* after issue, *relictâ verificatione*.

(Entry of warrants of attorney and memorandum, &c. as before p. 316, 17.)

(§ 23.)

And the said *C. D.* by *G. H.* his attorney, comes and defends the wrong and injury when, &c. and says that he cannot deny the action of the said *A. B.* nor but that the said writing obligatory is the deed of him the said *C. D.* nor but that he owes to the said *A. B.* the said sum of — *l.* above demanded, in manner and form as the said *A. B.* hath above thereof complained against him: Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* his said debt, and also — *l.* for his damages which he hath sustained, as well on occasion of the detaining the said debt, as for his costs and charges by him about his suit in this behalf expended; by the court of our said lord the king now here adjudged to the said *A. B.* and with his assent: And the said *C. D.* in mercy, &c.

The like in *dedit* on bond, before plea, of the same term with the declaration.

Judgment signed, &c.

Mercy.

And now at this day, that is to say, on — next after — in this same term, until which day the said *C. D.* had leave to imparl to the said bill, and then to answer the same, &c. before our said lord the king at *Westminster*, come as well the said *A. B.* as the said *C. D.* by their respective attornies afore-

(§ 24.)

The like as to part, of a different term, with a *remittitur* as to the residue.

said, and the said *C. D.* defends the wrong and injury when, &c. and says that he cannot deny the action of the said *A. B.* nor but that he the said *C. D.* does owe to the said *A. B.* the sum of — *l.* parcel of the said sum of — *l.* above demanded, and upon this the said *A. B.* freely here in court remits to the said *C. D.* the sum of — *l.* residue of the said sum of — *l.* above demanded, and all damages by him sustained on occasion of the detention of the said last-mentioned sum of money, and prays judgment for the said sum of — *l.* parcel, &c. so acknowledged as aforesaid, together with his costs and charges by him about his suit in this behalf expended, to be adjudged to him, &c. : Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* the said sum of — *l.* parcel, &c. in form aforesaid acknowledged, and also — *l.* for his said costs and charges, by the court of our said lord the king, now here adjudged to the said *A. B.* and with his assent : And the said *C. D.* in mercy, &c. And let the said *C. D.* be acquitted of the said sum of — *l.* residue, &c. and the damages aforesaid in form aforesaid remitted, &c.

Judgment
signed, &c.

Mercy.

(§ 25.)

The like,
against an
executor or
administrator.

Judgment
signed, &c.

And the said *C. D.* by *G. H.* his attorney, comes and defends the wrong and injury when, &c. and says that he cannot deny the action of the said *A. B.* nor but that the said writing obligatory is the deed of the said *E. F.* nor but that he the said *C. D.* detains from the said *A. B.* the said sum of — *l.* above demanded, in manner and form as the said *A. B.* hath above in that behalf alleged. : Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* executor (or administrator) as aforesaid, his said debt, and also — *l.* for his damages which he hath sustained, as well on occasion of the detaining of the said debt, as for his costs and charges by him about his suit in this behalf expended, by the court of our said lord the king, now here adjudged to the said *A. B.* and with his assent, to be levied of the goods and chattels which were of the said *E. F.* at the time of his death, in the hands of the said *C. D.* as executor (or administrator) as aforesaid to be administered, if he hath so much thereof in his hands to be administered, and

If he hath not so much thereof in his hands to be administered, then the said — l. for the damages aforesaid, to be levied of the proper goods and chattels of the said C. D.: And the said C. D. in mercy, &c.

Mercy.

(To the end of the plea; and then as follows:) (§ 26.)
And hereupon the said A. B. inasmuch as the said C. D. doth not deny the action of the said A. B. nor but that the said writing obligatory is the deed of the said E. F. nor but that he the said C. D. detains from the said A. B. the said sum of — l. above demanded, in manner and form as the said A. B. hath above in that behalf alleged; and inasmuch as the said A. B. cannot deny but that the said C. D. hath not any goods or chattels which were of the said E. F. at the time of his death, in his hands to be administered, in manner and form as the said C. D. hath above in his said plea in that behalf alleged, prays judgment, and his said debt, together with his damages by him sustained on occasion of the detaining thereof, to be adjudged to him; to be levied of the goods and chattels which were of the said E. F. at the time of his death, and which shall hereafter come to the hands of the said C. D. to be administered: Therefore it is considered, that the said A. B. do recover against the said C. D. executor (or administrator) as aforesaid, his said debt, and also — l. for his damages which he hath sustained on occasion of the detaining thereof, by the court of our said lord the king now here adjudged to the said A. B. and with his assent; to be levied of the goods and chattels which were of the said E. F. at the time of his death, and which shall hereafter come to the hands of the said C. D. to be administered, &c.

Judgment of assets in futuro on a plea of plene administravit in debt.

Judgment assigned, &c.

(To the end of the plea, and then as follows:) (§ 27.)
And hereupon the said A. B. inasmuch as the said C. D. doth not deny the action of the said A. B. nor but that the writing obligatory aforesaid is the deed of the said E. F. nor but that the said C. D. detains from the said A. B. the said sum of — l. above demanded, in manner and form as the said A. B. hath above in that behalf alleged; and inasmuch as

(§ 27.)
The like, of assets acknowledged in part, and for the residue of assets in futuro, on a plea of plene administravit in debt.

Judgment
signed, &c.

the said *A. B.* cannot deny but that the said *C. D.* hath not any goods and chattels which were of the said *E. F.* at the time of his death, in his hands to be administered, except the said goods and chattels to the value of ——— *l.* as aforesaid, prays judgment, and his said debt, together with his damages by him sustained on occasion of the detaining thereof, to be adjudged to him; to be levied, as to ——— *l.* part thereof, of the said goods and chattels so as aforesaid acknowledged to be in the hands of the said *G. D.* to be administered, and as to the residue thereof, to be levied of other goods and chattels which were of the said *E. F.* at the time of his death, and which shall hereafter come to the hands of the said *G. D.* to be administered: Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* his said debt, and also ——— *l.* for his damages which he hath sustained on occasion of the detaining thereof, by the court of our said lord the king now here adjudged to the said *A. B.* and with his assent, to be levied, as to the said ——— *l.* part thereof, of the said goods and chattels so as aforesaid acknowledged to be in the hands of the said *G. D.* to be administered, and as to the residue thereof, to be levied of other goods and chattels which were of the said *E. F.* at the time of his death, and which shall hereafter come to the hands of the said *G. D.* to be administered, &c.

(§ 38.)
The like against three executors, where one pleads *plene administravit* prater, another *plene administravit* generally, and the third lets judgment go by default.

NOTES

And the said *C. D.* and *E. F.* by ——— their attorney, and the said *G. H.* in his proper person, come and defend the wrong and injury when; &c. and the said *C. D.* says that the said *A. B.* ought not to have or maintain his aforesaid action thereof against him; because he says that he the said *C. D.* hath fully administered, &c. (stating the plea of *plene administravit prater*;) And the said *E. F.* says that the said *A. B.* ought not to have or maintain his aforesaid action thereof against him; because he says that he the said *E. F.* hath fully administered, &c. (stating the plea of *plene administravit* generally;) And the said *G. H.* says nothing in bar or conclusion of the said action of the said *A. B.* by which the said *A. B.* remains therein undefended against the said *G. H.* And hereupon the said *A. B.*

(§ 29.)
Judgment by
cognovit actionem in debt
after issue,
relictâ verificatione.

(To the end of the issue, and then as follows:) At which day, before our said lord the king at *Westminster*, come the parties aforesaid by their attorneys aforesaid; and hereupon the said *C. D.* relinquishing his said plea by him above pleaded, saith that he cannot deny the action of the said *A. B.* nor that the said writing obligatory is the deed, &c." (as before, p. 329.)

(§ 30, 1.)

For Judgments by confession in Ejectment; vide post, Ejectment.

(§ 32.)
Judgment for
the plaintiff,
on demurrer
to a declaration
in *assumpsit*.

As yet of — term, &c.
(Entry of warrants of attorney as before, p. 324.) — to wit: *Be it remembered, &c.* (here copy the demurrer-book *verbatim*, and then proceed as follows:) At which day before our said lord the king at *Westminster*, come as well the said *A. B.* as the said *C. D.* by their attorneys aforesaid: Whereupon all and singular the premises being seen, and by the court of our said lord the king now here fully understood, and mature deliberation being thereupon had, it appears to the said court here, that the declaration aforesaid, and the matters therein contained, are sufficient in law for the said *A. B.* to have and maintain his aforesaid action thereof against the said *C. D.* wherefore the said *A. B.* ought to recover against the said *C. D.* his damages by reason of the premises: But because it is unknown, &c. (as before, p. 311, 12.; or if the damages are assessed by the court; "And because it is suggested, &c." as before, p. 315, 16. or in *debt*; "Therefore it is considered, &c." as before, p. 317.)

The like, after
continuances,
on demurrer
to one count
of a declaration
in *debt*,
and award of
venire, to try

(To the end of the issue and demurrer book, and then as follows:) At which day, before our said lord the king at *Westminster*, come the parties aforesaid by their attorneys aforesaid; and the sheriffs have not sent the writ of our said lord the king to them in that behalf directed, nor have they done any thing there-

upon. Therefore as well to try the said issue above joined between the said parties, to be tried by the country, as to inquire of and assess the damages by reason of the detention of the said debt in the said first count mentioned, in case judgment shall be given for the said *A. B.* as to the premises whereon the said parties have above put themselves upon the judgment of the court, let a jury, as before, thereupon come before our said lord the king at *Westminster*, on — next after — by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.; the same day is given to the parties aforesaid at the same place. And because the court here are not yet advised what judgment to give in the premises, whereon the said parties have put themselves upon the judgment of the court, a day is given to the said parties, before our said lord the king at *Westminster*, on the said — next after — to hear the judgment of the said court thereupon; for that the said court here is not yet advised thereof, &c. At which day, before our said lord the king at *Westminster*, come the parties aforesaid, by their attornies aforesaid; and the sheriffs have not sent the writ of our said lord the king to them in that behalf directed, nor have they done any thing thereupon: And hereupon all and singular the premises, whereof the said parties have put themselves on the judgment of the court, being seen, and by the court here fully understood, and mature deliberation being thereupon had, it appears to the said court here, that the said first count of the said declaration, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for the said *A. B.* to have and maintain his aforesaid action thereof against the said *C. D.* Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* his said debt of — *l.* in the said first count of the said declaration mentioned, together with his damages by him sustained on occasion of the detention thereof, &c.: But because it is unknown by the court here, what damages the said *A. B.* hath sustained by reason thereof; and because it is convenient and necessary that there be but one taxation of damages in this suit; therefore let the giv-

the issue on other counts, and assess damages on the first, with an *unica taxatio*.

ing of judgment in this behalf against the said *C. D.* be stayed, until the trial of the said issue above joined between the said parties, to be tried by the country; and as well to try the said last-mentioned issue, as to inquire of and assess the damages which the said *A. B.* hath sustained by reason of the detention of the said debt in the said first count of the said declaration mentioned, let a jury thereupon come before our said lord the king at *Westminster*, on — next after — by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.; the same day is given to the parties aforesaid at the same place.

For the form of a judgment for the plaintiff on demurrer to a plea in *debt* on bond, and suggestion of breaches, &c. on the statute 8 and 9 *W. 3. c. 11. § 8.* see the very excellent edition of *Saunders*, by *Mr. Serjeant Williams*, Vol. I. p. 58. n. 1. and ante, s. 12.

(§ 33.)

The like, on demurrer to a replication.

(To the end of the demurrer-book, and then as follows:) At which day, before our said lord the king at *Westminster*, come the parties aforesaid by their attorneys aforesaid: Whereupon all and singular the premises being seen, and by the court of our said lord the king now here fully understood, and mature deliberation being thereupon had, it appears to the said court here, that the said plea in manner and form aforesaid by the said *A. B.* above in reply pleaded, and the matters therein contained, are sufficient in law for him the said *A. B.* to have and maintain his aforesaid action thereof against the said *C. D.* wherefore the said *A. B.* ought to recover against the said *C. D.* his damages by reason of the premises. But because it is unknown, &c. (as directed in p. 334.)

(§ 34.)

The like, on demurrer to a replication to one of several pleas in trespass, with a *relicta conditione* as to another.

(To the end of the demurrer-book, and then as follows:) At which day, before our said lord the king at *Westminster*, come the parties aforesaid by their attorneys aforesaid: Whereupon all and singular the premises being seen, and by the court of our said lord the king now here fully understood, and mature deliberation being thereupon had, it appears to the said court here, that the said plea by

the said *A. B.* in manner and form aforesaid above in reply pleaded, to the said plea of the said *C. D.* by him lastly above pleaded in bar, as to the trespasses in the introductory part of that plea mentioned, and the matters therein contained, are sufficient in law for him the said *A. B.* to have and maintain his aforesaid action thereof against the said *C. D.* And hereupon the said *C. D.* relinquishing his said plea by him first above pleaded, says that he cannot deny the action of the said *A. B.* nor but that he the said *A. B.* ought to recover against the said *C. D.* his damages by reason of the premises; wherefore the said *A. B.* ought to recover his damages against the said *C. D.* But because it is unknown, &c. (as before, p. 311, 12.)

Judgment of "Respondat ouster," on a demurrer to a plea in abatement.

— at which day before our lord the king at Westminster, come as well the said — as the said — by their attorneys aforesaid; whereupon all and singular the premises being seen, and by the court of our said lord the now king fully understood; and mature deliberation being had thereupon, it appears to the said court now here, that the said plea in manner and form above pleaded by the said — is not sufficient in law to quash the said bill of the said —. Therefore it is considered, that the said — answer further to the said bill of the said —; whereupon the said — being solemnly demanded, comes by — his attorney, and defends the wrong and injury when, &c. and says, &c.

(To the end of the demurrer book, and then as follows:—) At which day, before our said lord the king at Westminster, come as well the said *A. B.* as the said *C. D.* by their attorneys aforesaid;

(345)
The like in
abatement, not
demurrer to a
rejoinder.

Whereupon all and singular the premises being seen, and by the court of our said lord the king now here fully understood, and mature deliberation being thereupon had, it appears to the said court here, that the said plea of the said *C. D.* by him above pleaded by way of rejoinder, and the matters therein contained, are not sufficient in law to quash the said bill (or writ) of the said *A. B.* Therefore it is considered, that the said *C. D.* further answer the said *A. B.* to his bill (or writ) and declaration aforesaid; and thereupon a further day is given by the court here to the parties aforesaid, before our said lord the king at *Westminster*, until — next after —, that is to say, for the said *C. D.* to plead in chief to the said declaration of the said *A. B.* At which day, before our said lord the king at *Westminster*, come as well the said *A. B.* as the said *C. D.* by their attorney aforesaid; and the said *C. D.* by his said attorney, defends the wrong and injury when, &c. (proceeding with the plea in chief, &c.)

(§ 36.)
Judgment for
the plaintiff,
on a plea of
nil tiel record
in debt.

Judgment
signed, &c.

Mercy.

(To the end of the issue, and then as follows.)
At which day, before our said lord the king at *Westminster*, come as well the said *A. B.* as the said *C. D.* by their attorney aforesaid; upon which the record aforesaid being seen and inspected by the said court here, it sufficiently appears to the same court, that there is such a record of recovery against him the said *C. D.* at the suit of the said *A. B.* as he the said *A. B.* hath above in that behalf alleged. Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* his said debt, and also — for his damages which he hath sustained, as well by reason of the detaining the said debt, as for his costs and charges by him about his suit in this behalf expended, by the court of our said lord the king now here adjudged to the said *A. B.* and with his assent, according to the form of the statute in such case made and provided: And the said *C. D.* in mercy, &c.

(To the end of the issue, and then as follows.)
At which day, before our lord the king at *Westminster*, comes the said *A. B.* by his said attorney; and the said *C. D.* although solemnly demanded in open court to appear and produce the said record by him above in pleading alleged, cometh not, nor produceth the same, but therein wholly fails and makes default; wherefore the said *A. B.* ought to recover against the said *C. D.* his damages on occasion of the premises: But because it is unknown, &c. (as before, p. 311, 12.)

(§ 37.)

The like, on a replication of *nil tiel record in assumpsit*.

As yet of — term (the term of which issue was joined), in the — year of the reign of King *George the Third*. Witness *Edward Lord Ellenborough*.

(§ 38.)

Judgment for the plaintiff on a verdict on *assumpsit*, in a town cause.

— to wit. *A. B.* puts in his place *E. F.* his attorney, against *C. D.* in a plea of trespass on the case upon promises.

— to wit. The said *C. D.* puts in his place *G. H.* his attorney, at the suit of the said *A. B.* in the plea aforesaid.

— to wit. *Be it remembered*, that on — next after — in this same term, before our lord the king at *Westminster*, comes *A. B.* by *E. F.* his attorney, and brings into the court of our said lord the king before the king himself now here, his certain bill against *C. D.* being in the custody of the marshal of the marshalsea of our said lord the king before the king himself, of a plea of trespass on the case, &c.; and there are pledges for the prosecution thereof, to wit, *John Doe* and *Richard Roe*; which said bill follows in these words, that is to say, — (to wit.) *A. B.* complains of *C. D.* being in the custody of the marshal of the marshalsea of our lord the now king before the king himself; for that whereas, &c. (here copy the declaration to the

said, emitting the pledges, and proceed on a new line as follows :)

And the said *C. D.* by *G. H.* his attorney, comes and defends the wrong and injury when, &c. and says that he did not undertake or promise, in manner and form as the said *A. B.* hath above thereof complained against him ; and of this he the said *C. D.* puts himself upon the country ; and the said *A. B.* doth the like : Therefore let a jury thereupon come before our said lord the king at *Westminster*, on — next after —, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the parties aforesaid at the same place : Afterwards the process thereof is continued between the parties aforesaid, of the plea aforesaid, by the jury being respited between them, before our said lord the king at *Westminster*, until — next after — unless the right honourable *Edward Lord Ellenborough*, his majesty's chief-justice assigned to hold pleas in the court of our said lord the king before the king himself, shall first come on — the — day of — at the *Guildhall* of the city of *London* (or at *Westminster-hall* in the county of *Middlesex*), according to the form of the statute in such case made and provided, for default of the jurors, because none of them did appear : At which day, before our said lord the king at *Westminster* aforesaid, comes the said *A. B.* by his attorney aforesaid ; and the said chief-justice, before whom the said issue was tried, hath sent hither his record had before him in these words, to wit : Afterwards, that is to say, on the day and at the place within contained, before the right honourable *Edward Lord Ellenborough* the chief-justice within mentioned, *Essex Law*, esquire, being associated to the said chief-justice, according to the form of the statute in such case made and provided, come as well the within-named *A. B.* as the within-named *C. D.* by their respective attorneys within mentioned ; and the jurors of the jury whereof mention is within made, being summoned, also come, who to speak the truth of the matters within contained, being chosen, tried and sworn, say upon their oath, that the said *C. D.* did undertake and promise, in manner

the form, as that said *A. B.* hath within compassed against him; and they assess the damages of the said *A. B.* on occasion of the premises, besides his costs and charges by him about his suit in this behalf expended, to ————, and for those costs and charges to ————. Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* his said damages, costs and charges, by the jurors aforesaid in form aforesaid assessed, and also ———— for his said costs and charges, by the court of our said lord the king now here adjudged of increase to the said *A. B.* and with his assent; which said damages, costs, and charges, in the whole amount to ————. And the said *C. D.* in mercy, &c.

Judgment
signed, &c.

Mercy.

(As in the last, to the end of the issue and award of *verdict*, and then as follows:) Afterwards the process thereof is continued between the parties aforesaid, of the plea aforesaid, by the jury being respited between them, before our said lord the king at *Westminster*, until ———— next after ————, unless his majesty's justices assigned to take the assizes in and for the county of ———— shall first come on ———— the ———— day of ———— at ———— in the said county, according to the form of the statute in such case made and provided, for default of the jurors, because none of them did appear: At which day, before our said lord the king at *Westminster* aforesaid, comes the said *A. B.* by his attorney aforesaid; and the said justices of our said lord the king, before whom the said issue was tried, have sent hither their record had before them in these words, to wit: Afterwards, &c. (here copy the *postea*): And because the court of our said lord the king before the king himself now here, are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, before our said lord the king at *Westminster*, until ———— next after ————; to hear the judgment of the said court thereupon; for that the court of our said lord the king before the king himself now here, are not yet advised thereof, &c. At which day, before our said lord the king at *Westminster*, come as well the said *A. B.* by his attorney aforesaid, as the said *C. D.* by his attorney aforesaid: And thereupon all and singular the premises

(§ 39.)

The like, in a country cause, with a continuance after verdict by *curia advocari suit*.

being seen, and by the court of our said lord the king before the king himself now here fully understood, and mature deliberation being thereupon had, it is considered by the same court, that the said *A. B.* do recover against the said *C. D.* his said damages, &c. (as in the last).

(§ 40.)
The like, on a
special ver-
dict.

(As in the two former to the *postea*, after copying which, proceed as follows :) And because the court of our said lord the king before the king himself now here, are not yet advised, &c. (as in the last, to the words, "not yet advised thereof, &c.") At which day, before our said lord the king at *Westminster*, come as well the said *A. B.* as the said *C. D.* by their respective attornies aforesaid: And thereupon all and singular the premises being seen, and by the court of our said lord the king before the king himself now here fully understood, and mature deliberation being thereupon had, it appears to the said court here, that the said *C. D.* did undertake, &c. in manner and form as the said *A. B.* hath above thereof complained against him: Therefore it is considered, &c.

The like, after
a verdict and
assessment of
damages, on
the stat. 8 & 9
W. III. c. 11.
§ 8.

Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* his said debt, and his damages aforesaid, on occasion of the detention thereof, to 1s. together with his costs and charges aforesaid to 40s. by the said jury in form aforesaid assessed, and also —*l.* for his said costs and charges, by the court of our said lord the king before the king himself now here adjudged of increase to the said *A. B.* and with his assent; which said damages, costs and charges in the whole amount to —*l.* It is also considered by his majesty's court here, that the said *A. B.* have execution against the said *C. D.* of the damages aforesaid to —*l.* by the said jury in form aforesaid assessed, on occasion of the aforesaid breach of the said condition of the said writing obligatory, according to the form of the statute in such case made and provided: And the said *C. D.* in mercy, &c.

Mercy.

(§ 41.)
Suggestion of

(To the end of the *postea*.) And upon this the said *A. B.* gives the court here to understand and

be informed, that after the last continuance of the plea aforesaid, and before this day, to wit, on — the said *E. F.* died, to wit, at — and the said *C. D.* then and there survived him; which the said *C. D.* doth not deny, but admits the same to be true; therefore let all further proceedings in this cause against the said *E. F.* be stayed; whereupon the said *A. B.* prays judgment against the said *C. D.* of and upon the premises: Therefore it is considered, &c.

the death of one of the defendants, after verdict, and before judgment.

Therefore it is considered that the said *A. B.* do recover against the said *C. D.* as executor (or administrator) as aforesaid, his damages aforesaid by the said jury in form aforesaid assessed, and also — *l.* for his said costs and charges, by the court of our said lord the king now here adjudged of increase to the said *A. B.* and with his assent; which said damages, costs, and charges in the whole amount to — *l.* to be levied of the goods and chattels which were of the said *E. F.* at the time of his death, in the hands of the said *C. D.* as executor (or administrator) as aforesaid to be administered, if he hath so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered, then the said sum of — *l.* parcel of the damages aforesaid, being for the costs and charges aforesaid, to be levied of the proper goods and chattels of the said *C. D.* And the said *C. D.* in mercy, &c.

(§ 42.) Judgment for the plaintiff, on a verdict in *assumpsit*, against an executor or administrator.

Mercy.

*Judgment (on the two issues of "non assumpsit" by the testator and "plene administravit," by the executrix, the jury finding that the defendant has assets to satisfy only part of the debt) to include any assets, which may have come to hand between plea pleaded and judgment, where the plaintiff has omitted to reply that fact.**

— as to the first issue, between the said parties

* As he may do; (6 T. R. 10.) and if he does, the issue being tried by the jury and the truth found, the assets, if found, will

within joined, upon their oath say, that the within named *W. C.* in his life time did undertake and promise in manner and form as the said *F.* hath above thereof complained against her the said *M.* and they assess the damages of the said *F.* by reason of the not performing of the said promises and undertakings over and above his costs and charges by him about his suit in this behalf expended, to 80*l.* and for those costs and charges to 40*s.* And as to the last issue between the said parties within joined, the jurors aforesaid upon their oath aforesaid say, that the said *M.* on the day of exhibiting the bill of the said *F.* in this behalf, and since, had goods and chattels which were of the said *W.* at the time of his death in her hands, to be administered to the value of 40*l.* parcel of the said damages above assessed, wherewith she the said *M.* might have satisfied the said *F.* 40*l.* parcel of the said damages; and as to 40*l.* residue of the said damages that the said *M.* on the day of exhibiting the bill of the said *F.* in this behalf or ever since, had not any other goods and chattels which were of the said *W.* at the time of his death in the hands of the said *M.* to be administered, wherewith she could have satisfied the said *F.* the said 40*l.* residue of the said damages so assessed as aforesaid. Therefore it is considered that the said *F.* do recover against the said *M.* the said 40*l.* by the said jury in form aforesaid found parcel of the said damages of 80*l.* above assessed, and also 35*l.* for his costs and charges of increase by the said court of our said lord the king here, adjudged to the said *F.* with his assent, which said damages amount in the whole to — the said costs and charges parcel of the damages last mentioned amounting to —, to be levied of the goods and chattels which were of the said *W.* at the time of his death in the hands of the said *M.* to be administered, if she hath so much in her hands to be administered; and, if not, then the costs and

be specifically appropriated, as in the former part of the above judgment. Where the plaintiff has omitted to reply the fact, and assets do come to hand between plea and judgment, it seems, on principle, that the plaintiff should sue out a "*Sci. Fa.*" On the above judgment, to shew that assets have so come to hand, as in the case of assets, "*quando acciderint.*"

charges to be levied of the proper goods and chattels of the said *M.*; and that the said *F.* do recover the said 40*l.* residue of the said damages in form aforesaid assessed, to be levied of the goods and chattels which were of the said *W.* at the time of his death, *or which since the pleading of the said second plea of the said M.* have come, or at any time hereafter shall come to the hands of the said *M.* to be administered. And the said *M.* in mercy, &c.

1 Wms. Saund. 336. a.

Therefore it is considered that the said *A. B.* do recover against the said *C. D.* his said debt, and his damages aforesaid to —*l.* by the said jury in form aforesaid assessed, and also —*l.* for his said costs and charges, by the court of our said lord the king now here adjudged of increase to the said *A. B.* and with his assent; which said damages, costs, and charges in the whole amount to —*l.* And the said *C. D.* in mercy, &c. (Or if the defendant has denied his deed, a *capiatur* should be entered, instead of a *misericordia*, thus: And let the said *C. D.* inasmuch as he has denied his deed, be taken, &c.)

(§ 43.)

The like, in debt.

Mercy.

Capiatur.

Therefore it is considered, that the said *A. B.* who sues as aforesaid, do recover against the said *C. D.* for himself and our said lord the king, the said sum of —*l.* in the said — count of the said declaration mentioned, parcel of the said sum of —*l.* above demanded; and that the said *A. B.* who sues as aforesaid have one moiety thereof to his own use, and that our said lord the king have the other moiety thereof to his own use, according to the form of the statute in such case made and provided: And the said *C. D.* in mercy, &c. And let the said *A. B.* who sues as aforesaid, be in mercy for his false complaint against the said *C. D.* for the residue of the said sum of —*l.* whereof the said *C. D.* is acquitted; and the said *C. D.* go thereof without day, &c.

(§ 44.)

The like, in debt *qui tam*, where part is found for the plaintiff, and part for the defendant.

Mercy.

(§ 45.)

The like, against an executor or administrator, where the jury find assets to the amount of part of the debt.

Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* executor (or administrator) as aforesaid, his said debt, and also his damages aforesaid by the said jury in form aforesaid assessed, and likewise — *l.* for his said costs and charges, by the court of our said lord the king now here adjudged of increase to the said *A. B.* and with his assent; which said damages costs and charges in the whole amount to — *l.* to be levied as to the sum of — *l.* parcel of the said debt, being the value of the said goods and chattels of the said *E. F.* so found by the said jury to be in the hands of the said *C. D.* to be administered, and also as to the said — *l.* for the damages costs and charges aforesaid, of the goods and chattels which were of the said *E. F.* at the time of his death, in the hands of the said *C. D.* to be administered, if he hath so much thereof in his hands to be administered, and if he hath not so much thereof in his hands to be administered, then the said — *l.* for the damages costs and charges aforesaid, to be levied of the proper goods and chattels of the said *C. D.* and as to the residue of the said debt, to be levied of the goods and chattels which were of the said *E. F.* at the time of his death, and which shall hereafter come to the hands of the said *C. D.* to be administered. And the said *C. D.* in mercy, &c.

Mercy.

(§ 46.)

The like, against an heir.

Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* his said debt, and his damages aforesaid to — *l.* by the said jury in form aforesaid assessed, and also — for his costs and charges aforesaid, by the court of our said lord the king now here adjudged of increase to the said *A. B.* and with his assent; which damages costs and charges in the whole amount to — *l.* to be levied of the lands and tenements which were of the said *E. F.* in fee-simple at the time of his death, and which came to and are now in the hands of the said *C. D.* by hereditary descent from the said *E. F.* And the said *C. D.* in mercy, &c.

Mercy.

(§ 47.)

The like, in detinue.

Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* the goods and chat-

tels aforesaid, or the said — *l.* for the value of the same, if the said *A. B.* cannot have again the said goods and chattels, and his said damages to — *s.* beyond the value aforesaid, by the said jury in form aforesaid assessed, and also — *l.* for his said costs and charges, by the court of our said lord the king now here adjudged of increase to the said *A. B.* and with his assent; which said damages costs and charges in the whole amount to — *l.* And the said *C. D.* in mercy, &c. And hereupon the sheriff is commanded, that he distrain the said *C. D.* by all his lands, &c. and that he answer for the issues, &c. so that he render to the said *A. B.* the goods and chattels aforesaid, or the said — *l.* for the value of the same; and in what manner, &c. Mercy.

Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* the goods and chattels, which by the jurors aforesaid are above found to be detained by the said *C. D.* from the said *A. B.* or the said — *l.* for the value of the same, if the said *A. B.* cannot have again those goods and chattels, and his said damages to — beyond the value aforesaid, by the jurors aforesaid in form aforesaid assessed, and also — *l.* for his said costs and charges, by the court of our said lord the king now here adjudged of increase to the said *A. B.* and with his assent; which said damages costs and charges in the whole amount to — *l.* And the said *C. D.* in mercy, &c. And the said *A. B.* is also in mercy for his false claim, of the residue of the said goods and chattels, whereof the said *C. D.* by the jurors aforesaid is above acquitted; and let the said *C. D.* go thereof without day, &c. And hereupon the sheriff is commanded, that he distrain, &c. (as in the last). (§ 48.) The like, where part is found for the plaintiff, and part for the defendant. Mercy.

Judgment for the treble value of tithes.

— therefore it is considered, that the said — recover against the said — as well the said debt

of — l. according to the form of the said statute; for the treble value of the said hay not divided, severed or put apart from the said nine parts aforesaid, and by the said — contrary to the form of the said statute taken and carried away, as — l. for the said damages so as aforesaid assessed by the said jury, and also — l. for the increase of his said costs by the said court of our said lord the king before the king himself now here adjudged to the said — with his assent, according to the form of the statute in such case made and provided, which said damages amount in the whole to the sum of — l. And the said — in mercy, &c.

(§ 49, 50.) *For judgments on verdict in Ejectment, vide post, Ejectment.*

(§ 51.)

Judgment of
non pros, for
want of a de-
claration, on
common pro-
cess by bill.

As yet of — term, &c.
— to wit. *C. D.* puts in his place *G. H.* his attorney, at the suit of *A. B.* in a plea of trespass.

— to wit. *C. D.* according to the form of the statute in such case made and provided, was served with a copy of a certain precept called a bill of *Middlesex*, (or of a certain writ of our lord the king called a *latitat*, or *alias capias*, &c. issuing out of the court of our said lord the king before the king himself, directed to the sheriff of —, if a *latitat* or *alias capias*, &c.) and returnable before our said lord the king at *Westminster*, on — next after — in — term now last past, to answer *A. B.* in a plea of trespass; and the said *C. D.* at the same day appeared by *G. H.* his attorney, according to the form of the statute in such case made and provided: And the said *A. B.* hath not declared in the said court of our said lord the king before the king himself at *Westminster* aforesaid, by his bill or declaration in any personal action or ejectment against the said *C. D.* before the end of this present — term, (or of — term then next ensuing,) being the next term after the appearance of him the said *C. D.* at

the suit of the said *A. B.* Therefore it is considered, that the said *A. B.* take nothing by his said precept (or writ); but that he be in mercy, &c. And it is further considered by his majesty's court here, that the said *C. D.* do recover against the said *A. B.* *— l.* for his costs and charges by him laid out about his defence in this behalf, by the court of our said lord the king now here adjudged to the said *C. D.* and with his assent, according to the form of the statute in such case made and provided: and that the said *C. D.* have execution thereof, &c.

Judgment
signed, &c.

Execution.

— to wit. *C. D.* puts in his place *G. H.* his attorney, at the suit of *A. B.* in a plea of trespass on the case upon promises (or as the plea is).

(§ 52.)
The like, by
original.

— to wit. *C. D.* late of —, according to the form of the statute in such case made and provided, was served with a copy of a certain writ of our lord the king called a special *capias ad respondendum*, issuing out of the court of our said lord the king before the king himself, directed to the sheriff of —, and returnable before our said lord the king, on — wheresoever our said lord the king should then be in *England*, to answer *A. B.* in a plea of trespass on the case upon promises, to the damage of the said *A. B.* of — *l.* (or as the plea is); and the said *C. D.* at the same day appeared, &c. (as in the last).

(Entry of warrant of attorney for the defendant, as before, p. 348.)

(§ 53.)
The like, on
bailable pro-
cess by bill.

— to wit. *C. D.* was arrested by virtue of a precept called a bill of *Middlesex*, (or of a certain writ of our lord the king called a *latitat* or *alias capias*, &c.) issuing out of the court of our said lord the king before the king himself, directed to the sheriff of —, (if a *latitat* or *alias capias*, &c.) and returnable before our said lord the king at *Westminster*, on — next after — in — term now last past, to answer *A. B.* in a plea of trespass, and also to a bill of the said *A. B.* to be exhibited against the said *C. D.* for — *l.* on promises, (or as the *actum* is) according to the custom of the court of our

said lord the king, before the king himself: And the said *C. D.* at the same day appeared, and put in special bail by *G. H.* his attorney, at the suit of the said *A. B.* And the said *A. B.* hath not declared, &c. (as before, p. 348.)

(§ 54.) — to wit. *C. D.* was arrested by virtue of a certain writ or mandate, directed to the sheriff of the county-palatine of *Lancaster*, and grounded upon a certain writ of our said lord the king called a *latitat*, (or *alias capias*, &c.) issuing out of the court of our said lord the king before the king himself, directed to the chancellor of the said county-palatine, and returnable, &c. (as in the last.)

(§ 55.) — to wit. *A. B.* who brought a writ of *exigi facias* of the lord the king before the king himself, against *C. D.* late of — of a plea, &c. did not prosecute his writ aforesaid: Therefore he and his pledges to prosecute are thereupon in mercy, &c. and let the names of the pledges be inquired, &c. and the said *C. D.* go thereof without day, &c. It is also considered, &c. (as before, p. 349.)

(§ 56.) — to wit. *C. D.* puts in his place *G. H.* his attorney, at the suit of *A. B.* who as well, &c. in a plea of debt on statute.

Judgment signed, &c. — to wit. *A. B.* who brought a writ of our lord the king, as well for our said lord the king as for himself, against *C. D.* of a plea of debt on statute, hath not prosecuted his writ aforesaid: Therefore it is considered, that the said *A. B.* take nothing by his said writ, but that he and his pledges to prosecute be in mercy: And it is further considered, &c. (as before, p. 349.)

(§ 57, 8, 9, 60.) For judgments for the defendant in *Replevin*, vide post, *Replevin*.

(§ 61.) Judgment of *non-pros.* for not replying. (Entry of warrant of attorney for the defendant.)

— to wit. *Be it remembered*, &c. (as in an issue, to the end of defendant's plea, and then as follows:)

And upon this the said *C. D.* prays that the said *A. B.* may reply to the aforesaid plea of him the said *C. D.* and thereupon a day is given by the court here to the said *A. B.* before our lord the king at *Westminster*, until — days next after the end of this same term, that is to say, for him the said *A. B.* to reply to the aforesaid plea of the said *C. D.* the same day is given to the said *C. D.* at the same place: At which day, before our said lord the king at *Westminster*, comes the said *C. D.* by his attorney aforesaid; and the said *A. B.* although at that day solemnly called, comes not, nor hath he replied to the aforesaid plea of the said *C. D.* nor doth he further prosecute his said suit: Therefore it is considered by the court here, that the said *A. B.* take nothing by his said bill (or writ,) but that he and his pledges to prosecute be in mercy, &c. And it is further considered by his majesty's court here, &c. (as before, p. 349.)

Judgment
signed, &c.

(Enter the warrants of attorney for both parties; and after copying the issue, to the end of the award of the *venire facias*, proceed as follows:)

(§ 62.)
The like, for
not entering
the issue.

At which day, before our said lord the king at *Westminster*, came as well the said *A. B.* as the said *C. D.* by their attorneys aforesaid; and the sheriff did not send the writ of our said lord the king to him in that behalf directed, nor did he do any thing thereupon: Therefore, as before, let a jury thereupon come before our said lord the king at *Westminster*, on — next after —, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the parties aforesaid at the same place: At which day, before our said lord the king at *Westminster*, came the parties aforesaid by their attorneys aforesaid; and the sheriff did not send the writ of our said lord the king to him in that behalf directed, nor did he do any thing thereupon: Whereupon the said *C. D.* prays the court of our said lord the king now here, that the said *A. B.* may enter the said issue above joined between the parties aforesaid: And hereupon the said *A. B.* is ordered by the court of our said lord the king now here, that he enter the said issue on — next

Judgment
signed, &c.

after — in this same term, on the peril attending the neglect thereof; the same day is given to the said *C. D.* there, &c. At which day, before our said lord the king at *Westminster*, comes the said *C. D.* by his said attorney, and the said *A. B.* although solemnly called, comes not, but makes default, nor hath he entered the said issue above joined in the plea aforesaid: Therefore it is considered by the court here, that the said *A. B.* take nothing by his said bill (or writ,) but that he and his pledges to prosecute be in mercy, &c. and that the said *C. D.* do go thereof without day, &c. And it is further considered, &c. (as before, p. 349.)

(§ 63.)
Judgment as
in case of a
nonsuit.

(As in the last, to the end of the second award of the *venire*, and then as follows:)

Judgment
signed, &c.

At which day, before our said lord the king at *Westminster*, comes the said *C. D.* by his said attorney; and the said *A. B.* although solemnly called, comes not: And it appearing to the court of our said lord the king now here, that the said *A. B.* hath neglected to bring the issue above joined on to be tried, according to the course and practice of the said court: Therefore, according to the form of the statute in such case made and provided, it is considered, that the said *A. B.* take nothing by his said bill (or writ,) but that he and his pledges to prosecute be in mercy, &c. and that the said *C. D.* do go thereof without day, &c. And it is further considered, &c. (as before, p. 349.)

Judgment of
nonsuit.

Therefore it is considered, that the said *A. B.* take nothing by his said bill (or writ), but that he and his pledges to prosecute be in mercy, &c. and that the said *C. D.* do go thereof without day, &c.: And it is further considered, &c. (as before, p. 349.)

(§ 64.)
The like, on
the *Welsh*-*ju*-*dicature*-act.

(To the end of the *postea*, and then as follows:)

But because it is suggested and proved, and manifestly appears to the court here, that the cause of action aforesaid arose in the principality of *Wales*, and that the said *C. D.* was resident within the do-

minion of *Wales*, at the time of the service of the writ of — served on him in this action: Therefore it is considered, that the said *A. B.* take nothing by his said writ, (or by his bill aforesaid), against the said *C. D.* but that he be in mercy for his false claim; and that the said *C. D.* do go thereof without day, &c. It is also considered, &c. (as before, p. 349.)

Afterwards, to wit, on — next after — in — term, in the — year of the reign of our lord the now king, before our said lord the king at *Westminster*, came the said *C. D.* by his attorney aforesaid; and the said *A. B.* did not then and there prosecute his said bill against the said *C. D.* with effect, but voluntarily permitted his suit to be discontinued: Therefore it is considered, that the said *A. B.* take nothing by his said bill, but that he and his pledges to prosecute be in mercy, &c. And it is further considered, &c. (as before, p. 349.)

(§ 65.)
Entry of discontinuance, by bill.

It is recorded by the court, on — in — term in the — year of the reign of our lord the now king, that the plea aforesaid hath not a day of continuance by the same roll, beyond the aforesaid —: Therefore let the plea aforesaid be discontinued, at the request of the said *A. B.* &c.

(§ 66.)
The like, by original.

And hereupon the said *A. B.* inasmuch as he cannot deny the several matters above pleaded by the said *C. D.* freely here in court confesses, that he will not further prosecute his suit against the said *C. D.*, Therefore it is considered by the court here, that the said *A. B.* take nothing by his said bill (or writ), but that he and his pledges to prosecute be in mercy, &c. and that the said *C. D.* do go thereof without day, &c. And it is further considered, &c. (as before, p. 349.)

(§ 67.)
Judgment for the defendant, on a nolle prosequi.

And hereupon the said *A. B.* freely here in court confesses, that he will not further prosecute his suit

(§ 68.)
The like, as to

a particular
count.

against the said *C. D.* in respect of the premises in the — count of the said declaration mentioned: Therefore, as to the premises in that count mentioned, let the said *C. D.* be acquitted, and go thereof without day, &c.

(§ 69.)

*Cassetur billa
vel breve.*

And hereupon the said *A. B.* inasmuch as he cannot deny the several matters above pleaded by the said *C. D.* but admits the same to be true, prays judgment, and that the said bill (or writ) of him the said *A. B.* may be quashed, to the intent that he the said *A. B.* may exhibit a better bill (or sue out a better writ) against the said *C. D.* Therefore it is considered by the court of our said lord the king before the king himself now here, that the said bill (or writ) of the said *A. B.* be quashed, &c.

(§ 70.)

Judgment for
the defendant,
on demurrer
to a plea.

(To the end of the demurrer-book, and then as follows:)

At which day, before our said lord the king at *Westminster*, come the parties aforesaid, by their attornies aforesaid: Whereupon all and singular the premises being seen, and by the court of our said lord the king now here fully understood, and mature deliberation being thereupon had, it appears to the said court here, that the said plea above pleaded by the said *C. D.* in manner and form aforesaid, and the matters therein contained, are sufficient in law to bar the said *A. B.* from having or maintaining his said action against the said *C. D.* Therefore it is considered, that the said *A. B.* take nothing by his said bill, but that he and his pledges to prosecute be in mercy, &c. and that the said *C. D.* do go thereof without day, &c. And it is further considered, &c. (as before, p. 349.)

Judgment
signed, &c.

(To the end of the issue, and then as follows:)

(§ 71.)

At which day, before our said lord the king at *Westminster*, come the parties aforesaid, by their attornies aforesaid; and the said *A. B.* hath not here in court the record of the supposed recovery in the said declaration mentioned, but hath failed and made default in producing the same: Therefore it is considered, that the said *A. B.* take nothing by his said bill, but that he and his pledges to prosecute be in mercy, &c. and that the said *C. D.* do go thereof without day, &c. And it is further considered, &c. (as before, p. 349.)

The like, on a plea of *nul tiel record*.

Judgment signed, &c.

(To the end of the issue, and then as follows:)

(§ 72.)

Afterwards the process thereof is continued between the parties aforesaid, of the plea aforesaid, by the jury being respited between them, before our said lord the king at *Westminster*, until — next after —, unless his majesty's justices assigned to take the assizes in and for the county aforesaid, shall first come on — the — day of — in the — year of the reign of our said lord the king, at — in the county aforesaid, according to the form of the statute in such case made and provided, for default of the jurors, because none of them did appear: And now here at this day, comes the said *C. D.* by his attorney aforesaid; and the said justices of assize, before whom the said issue was tried, have sent hither their record had before them in these words, to wit: Afterwards, &c. (to the end of the *postea*). Therefore it is considered, that the said *A. B.* take nothing by his said bill (or writ), but that he and his pledges to prosecute be in mercy, &c. and that the said *C. D.* do go thereof without day, &c. And it is further considered, &c. (as before, p. 349.)

Judgment for the defendant, on a verdict at the assizes.

Judgment signed, &c.

(As in the last, to the words "none of them did appear," and then as follows:)

(§ 73.)

The like, for a

surviving defendant.

At which day, before our said lord the king at *Westminster*, come as well the said *A. B.* by his attorney aforesaid, as the said *C. D.* by his attorney aforesaid; and the said *E. F.* comes not: And the said justices of assize, before whom, &c. have sent hither their record had before them in these words, to wit: Afterwards, &c. (here copy the *postea*). And upon this the said *C. D.* gives the court here to understand and be informed, that after the last continuance of the plea aforesaid, and before this day, to wit, on — the said *E. F.* died, to wit, at — and the said *C. D.* there survived him, which the said *A. B.* does not deny, but admits the same to be true; wherefore the said *C. D.* prays judgment of and upon the premises: Therefore it is considered, that the said *A. B.* take nothing by his bill aforesaid, but that he and his pledges to prosecute be in mercy, &c. and that all further proceedings as to the said *E. F.* be stayed, and the said *C. D.* do go thereof without day, &c. And it is further considered, &c. (as before, p. 349.)

Judgment signed, &c.

(§ 74.)

For judgment for the defendant on a verdict in Replevin, vide post, Replevin.

(§ 75.)

The like, for double costs, on the court of conscience act for *Middlesex*.

Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* his damages aforesaid, by the jurors aforesaid in form aforesaid assessed: And because it is suggested and proved, and manifestly appears to the court here, that the said *C. D.* at the time of bringing this action, did live and reside in the said county of *Middlesex*, and was liable to be summoned to the county court of *Middlesex* aforesaid: It is further considered by the said court here, that the said *C. D.* do recover against the said *A. B.* the sum of — *l.* for his double costs of suit in this behalf, by the said court here adjudged to the said *C. D.* and with his assent, according to the form of the statute in such case made and provided; and that the said *C. D.* have execution thereof, &c.

Judgment signed, &c.

Execution.

Suggestion on stat. 43 Geo. III. c. 46. s. 3. to issue the

(After the *postea*, proceed as follows:)

Therefore it is considered, that the said *A. B.* do recover against the said *C. D.* his damages afore-

said, in form aforesaid assessed: And upon this the said *C. D.* gives the court here to understand and be informed, that this action was brought against him the said *C. D.* by the said *A. B.* after the first day of June, in the year of our Lord 1803; and that he the said *C. D.* was arrested and held to special bail therein to the amount of the sum of — *l.* which the said *A. B.* doth not deny, but admits the same to be true: And because it has been also suggested, and made appear to the satisfaction of the court here, upon motion made in court for that purpose, and upon hearing the said parties by affidavit, according to the form of the statute in such case lately made and provided, that the said *A. B.* the plaintiff in the said action, had not any reasonable or probable cause for causing the said *C. D.* to be arrested and held to special bail in such amount as aforesaid; therefore by a rule or order of the same court here in that behalf made, according to the form of the statute aforesaid, it is ordered and directed, that the said *C. D.* be allowed his costs of this action, to be taxed by the master; and which costs were afterwards duly taxed by him, at the sum of — *l.* And thereupon it is further considered by the said court here, that the said *C. D.* after deducting the said sum of — *l.* so recovered by the said *A. B.* in this action as aforesaid, from the amount of his the said *C. D.*'s said costs so taxed as aforesaid, have his execution against the said *A. B.* for the residue of such costs, according to the form of the statute aforesaid, &c.

defendant to costs, where the plaintiff recovers less than the sum for which the defendant was held to bail.

In this case, the sum recovered was less than the amount of the defendant's costs: Where it happens otherwise, there is no occasion for the latter part of the above entry.

A memorial to be registered, pursuant to the statute, &c.

(§ 76.)

Memorial of a judgment.

Of a judgment in his majesty's court of King's

A 2

Bench, of — term, in the — year of the reign of king *George* the Third, between *A. B.* plaintiff and *C. D.* defendant, in a plea of, &c. Roll—

(§ 77.)
Certificate of
the master
thereon.

I do hereby certify, that judgment was signed in the above cause, the — day of — 18—

Robert Forster.

(§ 78.)
Affidavit of
signature.

E. F. of — maketh oath and saith, that he was present, and did see *Robert Forster* esquire, secondary of the court of King's Bench, sign the certificate of the judgment in the memorial above-mentioned.

Sworn, &c.

E. F.

Judgment for the demandant in a Writ of Right after a trial at bar.

(3 Wils. 563. where are all the pleadings.)

— the same day is given to the parties aforesaid here, &c. at which day here come, as well the said — as the said — by their attorneys aforesaid, and the recognitors of the assize whereof mention is above made being called, come, and certain of them, to wit — being elected, tried and sworn upon their oath say, that the said — hath greater title to hold the said tenements with the appurtenances to him and his heirs as he above demandeth the same, than the said — to hold the same as he now holdeth them as the said — by his aforesaid writ hath supposed: Therefore it is considered that the said — recover his seisin against the said — of the tenements aforesaid, with the appurtenances to hold to him and his heirs, quit of the said — and his heirs for ever; and the said — in mercy, &c.

Judgment for the tenant.

Therefore it is considered that the said — take nothing by his said writ, but be in mercy for his false claim thereof, and that the said — go thereof without day, &c. and that he the said — hold the tenements aforesaid, with the appurtenances to him and his heirs, quit of the said — and his heirs for ever.

Judgment in Dower for the value found and damages assessed by the jurors—demandant remitting part of the value and damages—writ of seisin awarded.

— at which day here cometh as well the said — as the said — by their attornies aforesaid, and hereupon the premises being seen, and by the justices here fully understood, it is considered that the said — may recover against the said — as well her seisin of the third part aforesaid, to hold to her in severalty by metes and bounds, as the value of the third part aforesaid from the time of the death of the said — once her husband; which said value from the time of the death of the said — once her husband, in the whole doth amount to — and her damages to — by the jurors aforesaid in form aforesaid assessed; and also 40s. to the said — at her request for costs and charges by the court here of increase adjudged; which said value and damages in the whole do amount to —: And the said — in mercy, &c. And hereupon the said — freely here in court doth remit the said — of the value and damages aforesaid, therefore the said — of the same is acquitted. And hereupon the said — prayeth the writ of the said king to the sheriff of the county aforesaid, to be directed to cause her to have full seisin of the third part aforesaid, with the appurtenances, and to her it is granted returnable here from the day of Easter in fifteen days, &c.

1 Townsend, 51.

Judgment on the return of the inquisition after default or demurter.

— and because the justices hereof and upon the premises without the knowledge of the true value of the said third part of the said — cannot rightly and lawfully consider and adjudge: Therefore the judgment thereupon is respited until, &c. And it is commanded to the sheriff, that by honest and lawful men of the county aforesaid he diligently enquire how much the said — are worth by the year according to the true value of the same, and how much time hath elapsed from the time of the death of the said — and the inquisition which, &c. the sheriff cause to appear here in eight days of the purification, &c. under the seal, &c. and the seals, &c.; the same day is given to the — here, &c. at which day come as well the said — as the said — by their attornies aforesaid and the sheriff, that is to say — esquire, now returneth here a certain inquisition before him at — in the county aforesaid, the — day of — last past, by the oath of twelve, &c. taken, by which it is found that the said third part of the said — from the time of the death of the said — until the day of taking the inquisition aforesaid, are clearly worth by the year — and that from the time of the death of the said — until the day of the taking of the inquisition aforesaid — are elapsed: Therefore it is considered that the said — may recover against the said — as well her seisin of the said third part of the said — to hold to her in severalty by metes and bounds, as the value of the third part of the same — from the time of the death of the said — once the husband of the said —, which said value from the time of the death of the said — once her husband, in the whole doth amount to — and her damages aforesaid to — l. by the jurors aforesaid assessed, which said damages in the whole do amount to —. And the said — in mercy, &c. Whereupon the said — prayeth writ of seisin to be directed, &c.

1 Townsend, 57. 60.

Waiver of costs assessed by the jury.

Therefore no respect being had to the damages and costs by the jurors aforesaid in form aforesaid assessed, because such like damages and costs by the law of the land in such case are in no wise to be adjudged,* it is considered that the said — may recover against the said — her seisin of the third part aforesaid, &c.

1 Townsend, 64.

Judgment in Formedon.

Therefore it is considered, that the said — may recover against the said — his seisin of the tenements aforesaid with the appurtenances. And the said — in mercy, &c. and hereupon the said — prayeth the writ of the lord the king to the sheriff of the county aforesaid to be directed, of causing him the said — to have full seisin of the tenements aforesaid, with the appurtenances, and to him it is granted returnable here on —.

* That is, in a writ of right of dower. For in dower "unde nihil habet" damages are given by the statute of Merton, c. 1.

REPLEVIN.

(§ 1.)
Postea for the
plaintiff, on
non cepit.

AFTERWARDS, &c. (as before, p. 295. to the words "tried and sworn," and then as follows:—say upon their oath, that the said *C. D.* did take the within-mentioned cattle goods and chattels, in manner and form as the said *A. B.* hath within complained against him; and they assess the damages, &c. (as before, p. 302.)

(§ 2.)
The like, for
the defendant,
on several is-
sues.

— as to the first issue within joined between the parties aforesaid, upon their oath say, that the said *A. B.* held and enjoyed the within-mentioned messuage or dwelling-house and premises with the appurtenances, as tenant thereof to the said *C. D.* by virtue of the within-mentioned demise, as the said *C. D.* hath within in that behalf in pleading alleged: And as to the last issue within joined between the parties aforesaid, the jurors aforesaid upon their oath aforesaid say, that at the time in that behalf within-mentioned, the rent within specified was in arrear and unpaid from the said *A. B.* to the said *C. D.*, as the said *C. D.* hath within in that behalf in pleading alleged; Therefore, &c.

(§ 3.)
The like, on
stat. 17 Car. II.
c. 7.

(As in the last, to the end of the finding upon the issues, and then as follows:.) And the jurors aforesaid, at the prayer of the said *C. D.*, according to the form of the statute in such case made and provided, having proceeded to inquire concerning the sum of the arrears of the rent within specified, and

the value of the cattle goods and chattels distrained, upon their oath aforesaid say, that the sum of such arrears was ——. *l.* and that the cattle goods and chattels distrained were of the true value of ——. *l.* : Therefore, &c.

The *judgments* in replevin, which will next be given, are either for the plaintiff or defendant ; and for the latter, they are either for a return of the cattle or goods at common law, to which damages and costs are superadded by the statutes 7 *Hen.* VIII. c. 4. § 3. and 21 *Hen.* VIII. c. 19. § 3., or for the arrears of rent, or value of the cattle or goods distrained, on the statute 17 *Car.* II. c. 7.

As yet of — term, (the term of which interlocutory judgment is signed,) in the — year of the reign of king *George* the Third. Witness *Edward* Lord *Ellenborough*. (§ 4.) Judgment for the plaintiff, by *nil dedit*.

— to wit. *A. B.* puts in his place *E. F.* his attorney, against *C. D.* in a plea of taking and unjustly detaining the cattle goods and chattels of the said *A. B.* against gages and pledges, &c.

— to wit. The said *C. D.* puts in his place *G. H.* his attorney, at the suit of the said *A. B.* in the plea aforesaid.

— to wit. *C. D.* was summoned to answer *A. B.* of a plea wherefore, &c. (here copy the declaration *verbatim*, and proceed on a new line as follows :)

And the said *C. D.* by *G. H.* his attorney, comes and defends the wrong and injury when, &c. and says nothing in bar or preclusion of the said action of the said *A. B.* whereby the said *A. B.* remains therein undefended against the said *C. D.* wherefore the said *A. B.* ought to recover against the said *C. D.* his damages on occasion of the taking, and unjustly detaining of the cattle goods and chattels aforesaid : But because it is unknown, &c. (as before, p. 311, 12. making the writ of inquiry &c.

turnable on a general return-day, wheresoever, &c.

The judgment for the plaintiff in *replevin*, on demurrer or verdict, is the same as in *trespass*, or other action for damages, for which *vide ante*, p. 320, &c. 325, &c.

(§ 5.)
The like, for the defendant, for a return, &c. on a *non-pros* for want of a declaration.

— to wit. *C. D.* puts in his place *G. H.* his attorney, at the suit of *A. B.* in a plea of taking and unjustly detaining the cattle; goods, and chattels of the said *A. B.* against gages and pledges, &c.

Judgment signed, &c.

— to wit. *C. D.* was summoned to answer *A. B.* of a plea, wherefore he took the cattle, goods, and chattels of the said *A. B.* and unjustly detained them against gages and pledges, &c. And thereupon the said *C. D.* in his proper person, offers himself on the fourth day against the said *A. B.* in the plea aforesaid; but the said *A. B.* although solemnly called, comes not, but makes default, nor does he further prosecute his writ against the said *C. D.* Therefore it is considered, that the said *A. B.* take nothing by his said writ, but that he and his pledges to prosecute be in mercy, &c. and that the said *C. D.* do go thereof without day, &c. and that he have a return of the said cattle, goods, and chattels, &c.: It is also considered by the court here, that the said *C. D.* do recover against the said *A. B.* —*l.* for his costs and charges by him laid out about his defence in this behalf, by the said court here adjudged to the said *C. D.* and with his assent, according to the form of the statute in such case made and provided; and that the said *C. D.* have execution thereof, &c.

Execution.

(§ 6.)
The like, for want of a plea in bar; with award of *retorno habendo*, and writ of inquiry of damages.

(Entry of warrants of attorney for both parties, as before, p. 363.)

— to wit. *C. D.* was summoned to answer unto *A. B.* of a plea, &c. (here copy the declaration and avowry or cognizance, and proceed as follows:)

And upon this the said *C. D.* prays that the said

A. B. may plead in bar of the said avowry (or cognizance); and thereupon a day is given to the said *A. B.* before the lord the king, until — wheresoever the said lord the king shall then be in *England*, that is to say, for him the said *A. B.* to plead in bar of the said avowry (or cognizance), &c. the same day is given to the said *C. D.* &c. At which day, before the said lord the king at *Westminster*, comes the said *C. D.* by his attorney aforesaid, and offers himself against the said *A. B.* in the plea aforesaid; but the said *A. B.* although solemnly called, comes not, but makes default, nor hath he pleaded in bar of the said avowry (or cognizance), nor does he further prosecute his writ against the said *C. D.*: Therefore it is considered, that the said *A. B.* take nothing by his said writ, but that he and his pledges to prosecute be in mercy, &c. and that the said *C. D.* do go thereof without day, &c. and that he have a return of the cattle, goods, and chattels aforesaid, &c. And it is further considered, that the said *C. D.* ought to recover against the said *A. B.* his damages on occasion of the premises, according to the form of the statute, &c. Therefore it is commanded to the sheriff, that without delay he cause the cattle, goods, and chattels aforesaid to be returned to the said *C. D.*; and that he do not deliver them, on the complaint of the said *A. B.* without the writ of the said lord the king, which shall make express mention of the judgment aforesaid; and in what manner he shall execute the writ of the said lord the king, he make appear to the said lord the king, on — wheresoever, &c. It is also commanded to the sheriff, that by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the said *C. D.* hath sustained, as well on occasion of the premises, according to the form of the statute in such case made and provided, as for his costs and charges by him laid out about his defence in this behalf; and that the inquisition which the said sheriff shall thereupon take, he make appear to the said lord the king, at the time aforesaid, wheresoever, &c. under his seal, and the seals of those by whose oath he shall take that inquisition; and that he have there the names of them by whose

Judgment
signed, &c.

oath he shall take that inquisition, together with the writ of the said lord the king to him thereupon directed; the same day is given to the said *C. D.* &c.

(§ 7.)

The like, with
a remittitur
damna.

(After the judgment for a return, proceed as follows:) And hereupon the said *C. D.* freely here in court remits to the said *A. B.* his damages aforesaid; therefore let the said *A. B.* be acquitted thereof: And it is further considered by his majesty's court here, that the said *C. D.* do recover against the said *A. B.* — *l.* for his costs and charges, &c. (as before, p. 364.)

(§ 8.)

The like, on
demurrer to a
plea in bar.

Judgment
signed, &c.

(Entry of warrants of attorney for both parties, as before, p. 363; and after entering the proceedings, to the end of the demurrer-book, go on as follows:) At which day, before our said lord the king at *Westminster*, come the parties aforesaid, by their attornies aforesaid; whereupon all and singular the premises being seen, and by the court of our said lord the king now here fully understood, and mature deliberation being thereupon had, it appears to the said court here, that the said plea of the said *A. B.* by him above pleaded in bar of the avowry (or cognizance) aforesaid, and the matters therein contained, are not sufficient in law to bar the said *C. D.* from avowing (or, acknowledging) the taking of the said cattle, goods, and chattels, in the said place in which, &c. to be just, as the said *C. D.* hath above alleged: Therefore it is considered, that the said *A. B.* take nothing by his said writ, but that he and his pledges to prosecute be in mercy, &c. and that the said *C. D.* do go thereof without day, &c. and that he have a return of the cattle, goods, and chattels aforesaid, to hold to him irreplevisable for ever; and that he ought to recover against the said *A. B.* his damages on occasion of the premises, according to the form of the statute, &c. Therefore it is commanded to the sheriff, that without delay he cause the cattle, goods, and chattels aforesaid, to be returned to the said *C. D.* to hold to him irreplevisable, in form aforesaid; and in what manner, &c. (as before, p. 365.)

(To the end of the *postea*, and then as follows :)
 Therefore it is considered, that the said *A. B.* take nothing by his writ aforesaid, but that he and his pledges to prosecute be in mercy, &c. and that the said *C. D.* do go thereof without day, &c. and that he have a return of the cattle, goods, and chattels aforesaid, to hold to him irreplevisable for ever: And it is further considered, that the said *C. D.* do recover against the said *A. B.* his damages aforesaid, by the jury aforesaid in form aforesaid assessed, and also — *l.* for his costs and charges aforesaid, by the court of our said lord the king now here adjudged of increase to the said *C. D.* and with his assent, according to the form of the statute in such case made and provided; which said damages, costs and charges in the whole amount to — *l.* and the said *A. B.* in mercy, &c.

(§ 9.)
 The like, on
 verdict.

Mercy.

(Entry of warrant of attorney for the defendant, as before, p. 363.)

(§ 10.)
 The like, for
 the arrears of
 rent, &c. on
 stat. 17. Car,
 II. c. 7. § 2.
 on a *non-pros*
 for want of a
 declaration.

— to wit. *C. D.* was summoned to answer *A. B.* of a plea, wherefore he took the cattle, goods, and chattels of the said *A. B.* and unjustly detained them against gages and pledges, &c. And thereupon the said *C. D.* in his proper person offers himself, on the fourth day, against the said *A. B.* in the plea aforesaid; and the said *A. B.* comes not, but makes default: Therefore it is considered, that the said *A. B.* take nothing by his said writ, but that he and his pledges to prosecute be in mercy, &c. and that the said *C. D.* do go thereof without day, &c. and that he have a return of the said cattle, goods, and chattels, &c.: And thereupon the said *C. D.* according to the form of the statute in such case made and provided, suggests, and gives the court here to understand and be informed, that he the said *C. D.* took the said cattle, goods, and chattels of the said *A. B.* for the taking whereof he was summoned to be in the said court of our said lord the king before the king himself; to answer to the said *A. B.* as aforesaid, at the parish of — in the said county of —, in a certain place there called —, and that he took the same as bailiff of *B. F.* for that the said *A. B.* for the space of — next before and

ending on the — day of — in the year of our Lord 18—, and from thence until the time of taking the said cattle goods and chattels, held and enjoyed the said place in which, &c. with the appurtenances, amongst other things, as tenant thereof to the said *E. F.* at and under the yearly rent of —*l.* payable —; and because the sum of —*l.* of the rent aforesaid, for the said space of — ending as aforesaid, on the said — day of — in the year aforesaid, and from thence until and at the time of taking the said cattle goods and chattels, was in arrear and unpaid from the said *A. B.* to the said *E. F.* he the said *C. D.* as bailiff of the said *E. F.* took the said cattle goods and chattels, as for and in the name of a distress for the said rent so due and in arrear from the said *A. B.* to the said *E. F.* as aforesaid; And hereupon the said *C. D.* according to the form of the statute in such case made and provided, prays the writ of our said lord the king to be directed to the sheriff of —, to inquire of the sum in arrear of the rent aforesaid, and of the value of the cattle goods and chattels aforesaid; and it is granted to him, &c. Therefore it is commanded to the said sheriff of —, that according to the form of the statute aforesaid, he diligently inquire, by the oath of twelve good and lawful men of his bailiwick, how much of the yearly rent aforesaid, at the time of taking and distraining the said cattle goods and chattels, was in arrear and unpaid, and how much the said cattle goods and chattels so as aforesaid taken and distrained were worth, according to the true value of the same; and that the inquisition which the said sheriff shall thereupon take, he make appear to our said lord the king, on — wheresoever our said lord the king shall then be in *England*, under his seal, and the seals of those by whose oath he shall take the said inquisition; and that he have there the names of them by whose oath he shall take the said inquisition, together with the writ of our said lord the king to him thereupon directed; the same day is given to the said *C. D.* &c. At which day, before our said lord the king at *Westminster*, comes the said *C. D.* by his attorney aforesaid; and the sheriff of —, to wit —, now here returns a certain inquisition indented, taken before

him at — in the said county, on — the — day of —, in the — year of the reign of our said lord the king, by the oath of twelve good and lawful men of his county; whereby it appears, that the sum of —*l.* of the said yearly rent, was in arrear and unpaid, and due and owing from the said *A. B.* to the said *C. D.* at the time in the said avowry (or cognizance) mentioned, and of the distress taken; and that the cattle goods and chattels distrained were worth, according to the true value thereof, the sum of —*l.* Therefore it is considered, that the said *C. D.* do recover against the said *A. B.* the said sum of —*l.* being the arrearages of the said rent, by the said inquisition in form aforesaid found, and also —*l.* by the court of our said lord the king now here adjudged to the said *C. D.* and at his request, for his costs and charges by him laid out about his defence in this behalf, according to the form of the statute in such case made and provided; which said arrearages costs and charges in the whole amount to —*l.* and that the said *C. D.* have execution thereof, &c.

Judgment
signed, &c.

Execution.

Therefore it is considered, that the said *C. D.* do recover against the said *A. B.* the said —*l.* parcel of the rent aforesaid, by the said inquisition in form aforesaid found, and also —*l.* by the court of our said lord the king now here adjudged to the said *C. D.* and at his request, for his costs and charges, &c. (as in the last,) which said value, costs, and charges in the whole amount to —*l.* and that the said *C. D.* have execution thereof, &c.

(§ 11.)

The like,
where the
goods are
found to be of
less value than
the rent.

Execution.

(Entry of warrants of attorney for both parties, as before, p. 363.)

(§ 12.)

The like, for
want of a plea
in bar.

— to wit. *C. D.* was summoned to answer unto *A. B.* of a plea, &c. (here copy the declaration, and avowry or cognizance, and proceed as follows:)

And upon this the said *C. D.* prays that the said *A. B.* may plead in bar of the said avowry (or cognizance), &c. (as before, p. 364. to the end of the judgment for a return, and then as follows:) And

hereupon the said *C. D.* according to the form of the statute in such case made and provided, prays the writ, &c. (as in the last but one, to the end.)

(§ 13.)
The like, on demurrer to a plea in bar.

(Entry of warrants of attorney for both parties, as before, p. 363; and after entering the proceedings, to the end of the demurrer-book, proceed as follows:)

At which day, before our said lord the king at *Westminster*, came the parties aforesaid, by their attornies aforesaid; and hereupon all and singular the premises being seen, &c. (as before p. 366. to the word "alleged:") Therefore it is considered, that the said *A. B.* take nothing by his said writ, but that he and his pledges to prosecute be in mercy, &c. and that the said *C. D.* do go thereof without day, &c. And hereupon the said *C. D.* according to the form of the statute in such case made and provided, prays the writ of our said lord the king, to be directed to the sheriff of the said county of ———, to inquire of the value of the cattle goods and chattels aforesaid: Therefore the sheriff is commanded, that by the oath of twelve good and lawful men of his bailiwick, he diligently inquire, how much the said cattle goods and chattels were worth, at the time of taking the same, according to their true value; and that the inquisition which the said sheriff shall thereupon take, he make appear, &c. (as before, p. 367, 8. making the jury find "that the said cattle, goods, and chattels, at the time of taking the same, were worth ———/ according to their true value:")

(§ 14.)
The like, on a nonsuit or verdict.

(To the end of the *postea*, and then as follows:)

Therefore it is considered, that the said *A. B.* take nothing by his writ aforesaid, but that he and his pledges to prosecute be in mercy, &c. and that the said *C. D.* do go thereof without day, &c. It is also considered, that the said *C. D.* do recover against the said *A. B.* the said ———/ being the sum of the arrears aforesaid, in form aforesaid assessed, and also ———/ by the court of our said lord the king now here adjudged to the said *C. D.* and with his assent, according to the form of the statute in

such case made and provided, for his costs and charges by him laid out about his defence in this behalf; which said arrears costs and charges in the whole amount to —*l.* and that the said *C. D.* have execution thereof, &c.

George the Third, &c. To the sheriff of — greeting: Whereas *C. D.* was summoned to be in our court before us, to answer *A. B.* of a plea wherefore the said *C. D.* on the — day of — in the year of our Lord 18—, at the parish of — in your county, in a certain place there called —, took the cattle goods and chattels of the said *A. B.* to wit, &c. (here set out the cattle and goods, as in the declaration,) and unjustly detained them against gages and pledges, until, &c. Wherefore the said *A. B.* said that he was injured, and had sustained damage to the value of —*l.* and therefore he brought his suit, &c. And such proceedings were thereupon had in our said court before us at *Westminster* aforesaid, that it was afterwards considered by the same court, that the said *A. B.* ought to recover against the said *C. D.* his damages on occasion of the taking and unjustly detaining of the cattle goods and chattels aforesaid: But because it is unknown, &c. (as before, p. 286, 7. making the writ returnable on a general return-day, wheresoever, &c.)

(§ 15.)

Writ of inquiry of damages, for the plaintiff.

George the Third, &c. To the sheriff of — greeting: Whereas *C. D.* was summoned to be in our court before us, to answer *A. B.* of a plea wherefore the said *C. D.* on — at —, in a certain place there called —, took the cattle goods and chattels of the said *A. B.* to wit, &c. and unjustly detained them against gages and pledges, until, &c. And the said *C. D.* appearing in our said court before us at *Westminster*, by — his attorney, well avowed (or “as bailiff of *E. F.* well acknowledged”) the taking of the said cattle goods and chattels, &c. (reciting the avowry or cognizance, plea in bar, demurrer, and joinder :) And such proceedings were thereupon had in our said court before us, that it was afterwards considered by the same court, that the said plea of the said *C. D.* by

(§ 16.)

The like for the defendant, on demurrer to a plea in bar.

him above pleaded in bar of the writ (for compo-
zance) aforesaid, and the matters therein pleaded,
were not sufficient in law, &c. (as before, p. 367.)
It was also considered by the same court, that the
said *A. B.* should take nothing by his writ aforesaid,
but that he, and his pledges to prosecute, should be
in mercy, &c. and that the said *C. D.* should go
thereof without day, &c. and that he ought to re-
cover against the said *A. B.* his damages on occasion
of the premises, according to the form of the statute
in such case made and provided: But because it is
unknown, &c. (as before, p. 286, 7. making the writ
to inquire, "what damages the said *C. D.* hath sus-
tained, as well on occasion of the premises, accord-
ing to the form of the statute, &c. as for his costs
and charges by him laid out about his defence in this
behalf," and returnable as the last,.)

(§ 17.)

The like, to as-
certain the ar-
rears of rent,
&c. on stat. 17
Car. 2. c. 7. § 2.
on a non-pros
for want of a
declaration.

George the Third, &c. To the sheriff of —
greeting: Whereas *C. D.* was summoned to be in
our court before us, to answer *A. B.* of a plea where-
fore he took the cattle goods and chattels of the said
A. B. and unjustly detained them against wages and
pledges, &c. And the said *C. D.* offered himself in
our said court before us, on the fourth day, against
the said *A. B.* in the plea aforesaid; but the said
A. B. although solemnly called, came not, but made
default, nor did he further prosecute his writ against
the said *C. D.* Therefore it was considered by the
same court, that the said *A. B.* should take nothing
by his said writ, but that he and his pledges to pro-
secute, should be in mercy, &c. and that the said
C. D. should go thereof without day, &c. and that
he should have a return of the said cattle goods and
chattels, &c. And thereupon it hath been suggested
in our said court before us, by the said *C. D.* that
he took the said cattle goods and chattels of the said
A. B. for the taking whereof he was summoned to
be in our said court before us, to answer the said
A. B. as aforesaid, at — in the said county, in a
certain place there called —, and that he hath the
same as bailiff of *E. F.* for that the said *A. B.* for
the space of —, next before and ending on the
— day of — in the year of our Lord 18 —, and
from thence until and at the time of taking the said

cattle goods and chattels, held and enjoyed the said place in which, &c. with the appurtenances, amongst other things, as tenant thereof to the said *E. F.* at and under the yearly rent of ——. And because ——. of the rent aforesaid, for the said space of —— ending as aforesaid, on the said, &c. and from thence until and at the time of taking the said cattle goods and chattels, were due and in arrear from the said *A. B.* to the said *E. F.*: he the said *C. D.* as bailiff of the said *E. F.* took the said cattle goods and chattels, as for and in the name of a distress for the said rent, so due and in arrear from the said *A. B.* to the said *E. F.* as aforesaid: And hereupon the said *C. D.* according to the form of the statute in such case made and provided, prayed our writ, to be directed to you, to inquire of the arrears of the rent aforesaid, and of the value of the said cattle goods and chattels, and it was granted to him, &c. as by the record and proceedings thereof, still remaining in our said court before us at *Westminster* aforesaid, fully appears: Therefore we command you, that according to the form of the statute aforesaid, you diligently inquire, by the oath of twelve good and lawful men of your bailiwick, how much of the yearly rent aforesaid, at the time of taking and distraining the said cattle goods and chattels, was in arrear and unpaid, and how much the said cattle goods and chattels so as aforesaid taken and distrained were worth, according to the true value of the same; and the inquisition which you shall thereupon take, make appear to us, on —— where-soever we shall then be in *England*, under your seal, and the seals of those by whose oath you shall take the said inquisition; and have there the names of them by whose oath you shall take the said inquisition; and this writ. Witness, *Edward* Lord *El-*
kenborough, &c.

George the Third, &c. To the sheriff of —— greeting: Whereas *C. D.* was summoned to be in our court before us, to answer *A. B.* of a plea wherefore the said *C. D.* on —— at —— in your county, in a certain place there called ——, took the cattle goods and chattels of the said *A. B.* to wit, (set out the cattle and goods mentioned in the declaration,)

(§ 13.)
The like, for
want of a plea
in bar.

and unjustly detained them against gages and pledges, until, &c. And the said *C. D.* appearing in our said court before us at *Westminster* aforesaid, by — his attorney, well avowed (or, “as bailiff of *E. F.* well acknowledged”) the taking of the said cattle goods and chattels, &c. (here recite the whole of the avowry or cognizance, and proceed as follows :) And such proceedings were thereupon had in our said court before us at *Westminster* aforesaid, that it was afterwards considered in the same court, that the said *A. B.* should take nothing by his writ aforesaid, but that he and his pledges to prosecute should be in mercy,^o &c. and that the said *C. D.* should go thereof without day, &c. and that he should have a return of the said cattle goods and chattels, &c. And thereupon the said *C. D.* according to the form of the statute in such case made and provided, prayed our writ, &c. (as in the last, to the end.)

(§ 19.)
The like, to ascertain the value of the goods, on demurrer to a plea in bar.

George the Third, &c. To the sheriff of — greeting: Whereas *C. D.* was summoned, &c. (as in the last, to the end of the declaration :) And the said *C. D.* appearing in our said court before us at *Westminster*, by — his attorney, well avowed (or, “as bailiff of *E. F.* well acknowledged”) the taking of the said cattle goods and chattels, &c. (reciting the avowry or cognizance, plea in bar, demurrer and joinder :) And such proceedings were thereupon had in our said court before us at *Westminster* aforesaid, that it was afterwards considered by the same court, that the said plea of the said *C. D.* by him above pleaded in bar of the avowry (or cognizance) aforesaid, and the matters therein contained, were not sufficient in law, &c. (as before, p. 365.) It was also considered by the same court, that the said *A. B.* should take nothing by his writ aforesaid, but that he and his pledges to prosecute should be in mercy, &c. and that the said *C. D.* should go thereof without day, &c. and that he should have a return of the said cattle goods and chattels, &c.: And thereupon the said *C. D.* according to the form of the statute in such case made and provided, prayed our writ, to be directed to you, to inquire of the value of the cattle goods and

chattels aforesaid; and it was granted to him, &c. as by the record and proceedings thereof, still remaining in our said court before us at *Westminster* aforesaid, fully appears: Therefore we command you, that according to the form of the statute in such case made and provided, you diligently inquire, by the oath of twelve good and lawful men of your bailiwick, how much the said cattle goods and chattels were worth, at the time of taking the same, according to their true value; and the inquisition which you shall thereupon take, make appear, &c. (as before. p. 373.)

In the King's Bench.

Between

A. B. plaintiff.
and

C. D. defendant.

(§ 20.)

Notice of inquiry, on stat.
1 Car. 2. c. 7.
§ 2.

Take notice, that a writ of inquiry will be executed in this cause, on —, (*at the distance of fifteen days at least*), at —, (as before, p. 291-2.) touching the sum in arrear, at the time of the distress taken, and the value of the goods (or cattle) distrained, (or on demurrer, "of the value of the distress,") according to the form of the statute in such case made and provided. Dated, &c.

Your's, &c.

E. F. plaintiff's attorney.

To Mr. *G. H.* defendant's attorney.

— to wit. An inquisition indented, taken at —, &c. (as before, p. 292. to "good and lawful men of the said county," and then as follows:) who upon their oath say, that the sum of —/ of the yearly rent in the said writ mentioned, was in arrear and unpaid from the said *A. B.* to the said *C. D.* at the time of taking and distraining the cattle goods and chattels in the said writ also mentioned; and that the said cattle goods and chattels were then worth, according to their true value, the sum of —/ (or, on demurrer, "that the cattle goods and chattels in the said writ mentioned were worth, at the time of taking the same, according to their true va-

(§ 21.)

Inquisition
and return.

lue, the sum of ——.") In witness whereof, as well I the said sheriff, as the said jurors, have set our seals to this inquisition, the day and year, and at the place above written.

The execution of this writ appears in the inquisition hereunto annexed.

The answer of ——— sheriff.

(§ 22.)
Fieri facias, for
the plaintiff.

George the Third, &c. To the sheriff of ——— greeting: We command you, that of the goods and chattels of C. D. in your bailiwick, you cause to be made ——— l. which A. B. lately in our court before us at Westminster, recovered against him, for his damages which he had sustained, as well as satisfaction of the taking and unjustly detaining of the goods and chattels of the said A. B. as for his costs and charges by him about his suit in that behalf expended; whereof the said C. D. is convicted, &c. (see post).

(§ 23.)
The like, for
defendant,
on stat. 17
Car. II. c. 7.

George the Third, &c. To the sheriff of ——— greeting: We command you, that of the goods and chattels of A. B. in your bailiwick, you cause to be made ——— l. which C. D. lately in our court before us at Westminster, recovered against him, for certain arrearages of rent, according to the form of the statute in such case made and provided, and also ——— l. which in our same court before us were adjudged to the said C. D. for his costs and charges by him laid out about his defence in a certain action of replevin, lately commenced and depending in the same court, at the suit of the said A. B. against the said C. D. whereof the said A. B. is convicted, as appears to us of record: And have the said monies before us, on ——— wheresoever we shall then be in England, to render to the said C. D. for the arrearages of rent, and costs and charges aforesaid, and have therein writ. Witness, ———

(§ 24.)
The like, for
the value of
the value of
goods distrained
ed.

George the Third, &c. To the sheriff of ——— greeting: We command you, that of the goods and chattels of A. B. in your bailiwick, you cause to be made ——— l. which C. D. lately in our court before us at Westminster, recovered against him, for the

value of certain cattle (or, goods and chattels,) distrained by the said *C. D.* for certain arrearages of rent, &c. (as in the last.)

George the Third, &c. To the sheriff of —, greeting: Whereas *C. D.* was summoned to be in our court before us, to answer *A. B.* of a plea wherefore he took the cattle goods and chattels of the said *A. B.* and unjustly detained them against gages and pledges, &c. as it was said: And the said *A. B.* afterwards in our same court before us made default; wherefore it was considered in our same court, that he and his pledges to prosecute should be in mercy, &c. and that the said *C. D.* should go thereof without day, &c. and that he should have a return of the said cattle goods and chattels, &c. Therefore we command you, that without delay you cause the said cattle goods and chattels to be returned to the said *C. D.* and that you do not deliver them, on the complaint of the said *A. B.* without our writ, which shall make express mention of the judgment aforesaid; and in what manner you shall execute this our writ, make appear to us, on — wheresoever we shall then be in *England*; and have there this writ. Witness, &c.

(§ 25.)

Retorno habendo, on a nonpross for want of a declaration.

To wit. *C. D.* by his attorney offered himself on the fourth day against *A. B.* of a plea wherefore he the said *C. D.* took the cattle goods and chattels of the said *A. B.* and unjustly detained them against gages and pledges, &c. And the said *A. B.* being solemnly called, came not; and was the plaintiff. Therefore it is considered, that he and his pledges to prosecute be thereupon in mercy, &c. and that the said *C. D.* do go thereof without day, &c. and that he have a return of the said cattle goods and chattels, &c. and let the names of the pledges be inquired, &c. and in what manner, &c. let the sheriff make appear to the lord the king, on — wheresoever, &c.

(§ 26.)

Entry thereof.

George the Third, &c. To the sheriff of —, greeting: Whereas *C. D.* was summoned to be in our court before us, to answer *A. B.* of a plea wherefore the said *C. D.* on the — day of — in the

(§ 27.)

Retorno habendo, for want of a plea in bar.

year of our lord 18—, at the parish of — in your county, in a certain place there called —, took the cattle goods and chattels of him the said *A. B.* to wit, &c. (here set out the cattle and goods, as in the declaration,) and unjustly detained them against gages and pledges, until, &c. as it was said; And the said *C. D.* appearing in our said court before us, for a certain reason by him alleged in our same court, as bailiff of *E. F.* well acknowledged the taking of the said cattle goods and chattels, in the said place in which, &c. and justly, &c. for damage there done (or, “for certain arrears of rent, to wit, for the sum of — *l.* due and in arrear from the said *A. B.* to the said *C. D.* for the said place in which, &c. with the appurtenances, held and enjoyed under and by virtue of a certain demise thereof, made by the said *C. D.* for the space of — next before and ending on the — day of — in the year of our Lord 18—”) Whereupon the said *A. B.* being afterwards solemnly called in our said court before us, came not, nor did he further prosecute his writ aforesaid; wherefore it was considered in our said court before us at *Westminster*, that the said *A. B.* should take nothing by his writ aforesaid, but that he and his pledges to prosecute should be in mercy, &c. and that the said *C. D.* should go thereof without day, &c. and that he should have a return of the said cattle goods and chattels, &c. Therefore we command you, that without delay you cause the said cattle goods and chattels to be returned to the said *C. D.* and that you do not deliver them on the complaint of the said *A. B.* without our writ, which makes express mention of the judgment aforesaid; and in what manner you shall have executed this our writ, make appear to us on Monday wheresoever, &c. and have there this writ. Witness, &c.

(§ 23.)

The like, on demurrer to a plea in bar, and writ of inquiry of damages.

George the Third, &c. To the sheriff of — greeting: Whereas *C. D.* was summoned to be in our court before us, &c. (as in the last;) And the said *C. D.* appearing in our said court before us, well avowed; (or, “as bailiff of *E. F.* well acknowledged”) &c. (reciting the avowry, or cognizance, plea in bar, demurrer and joinder;) And such proceedings were thereupon had in our said court be-

fore us, that it was afterwards considered by the same court, that the plea aforesaid, by him the said *A. B.* above pleaded in bar of the said avowry (or cognizance,) and the matters therein contained were not sufficient in law, &c. (as before, p. 365.) It was also considered by the same court, that the said *A. B.* should take nothing by his said writ, &c. (as before, p. 365.) Therefore we command you, that without delay you cause the cattle goods and chattels aforesaid to be returned to the said *C. D.* to hold to him irrevocable, in form aforesaid; and in what manner you shall execute this our writ, make appear to us, on ———, wheresoever, &c. We likewise command you, that by the oath of twelve good and lawful men of your bailiwick, you diligently enquire, according to the form of the statute in such case made and provided, what damages the said *C. D.* hath sustained, as well on occasion of the premises, as for his costs and charges by him laid out about his defence in this behalf; and the inquisition which you shall thereupon take, make appear to us, on the aforesaid day, wheresoever, &c. under your seal, and the seals of those by whose oath you shall take that inquisition; and have there the names of them by whose oath you shall take that inquisition, and this writ. Witness, &c.

George the Third, &c. To the sheriff of ———, (§ 29.)
greeting: Whereas *C. D.* was summoned to be in our court before us, &c. (as before, p. 377, 8.) And the said *C. D.* appearing in our said court before us, alleged and said, that he as bailiff of *E. F.* took the cattle goods and chattels aforesaid, in the said place in which, &c. being the soil and freehold of the said *E. F.* doing damage there; and the said *C. D.* prayed a return of the said cattle goods and chattels to be adjudged to him, &c. And afterwards, by a certain jury of the country, upon which as well the said *C. D.* as the said *A. B.* had put themselves in that behalf, taken on the ——— day of ——— in the ——— year of our reign at ——— in your county, before *Edward Lord Ellenborough*, our chief justice, &c. by virtue of our writ of *wiseman*, it was found, that the said place in which, &c. at the said time when, &c. was the soil and freehold of the said *E. F.*

The like, after verdict and *fi. fa.* for the damages and costs.

as the said *C. D.* had alleged, and the jury of the said jury, according to the form of the statute in such cases made and provided, assessed the damages of the said *C. D.* on occasion of the premises, besides his costs and charges by him laid out about his defence in this behalf, to the said *A. B.* and for those costs and charges to the said *A. B.* Whereupon it was afterwards considered in our said court before us, that the said *A. B.* should take nothing by his writ aforesaid, &c. (reciting the judgment, entry p. 365, 6-2). Therefore we command you, that without delay you cause the cattle goods and chattels aforesaid to be returned to the said *C. D.* to hold to him irrepleviable, in form aforesaid, and in what manner you shall execute this our writ, make appear to us, on ———— where necessary, &c. We also command you, that of the goods and chattels of the said *A. B.* in your bailivick you cause to be made the said ———— for the damages costs and charges aforesaid: and have that money before us at the aforesaid time, to render to the said *C. D.* for his damages costs and charges aforesaid, and have there this writ. Witness, &c.

Before the coming of this writ to me, the cattle goods and chattels within mentioned were eloyed and removed by the within named *A. B.* to places to me unknown: Therefore I cannot cause the same to be returned to the within named *C. D.* as I am within commanded.

The answer of ———, sheriff.

(§ 30.)
Return of elon-
gata, to a writ
of retorno ha-
bendo.

(§ 31.)
Caption in pl-
aintiff there-
on, after judg-
ment of non-
pros for want
of a declara-
tion.

George the Third, &c. To the sheriff of ———, greeting. Whereas *C. D.* was summoned to be in our court before us, to answer *A. B.* of his plea wherefore he took the cattle goods and chattels of the said *A. B.* and unjustly detained them against wages and pledges, &c. And the said *A. B.* afterwards in our same court before us made default; wherefore it was considered that the said *A. B.* should take nothing by his writ aforesaid, but that he and his pledges to prosecute should be answer, &c. and that the said *C. D.* should go thereof without day, &c. and that he should have a return of the cattle goods and chattels aforesaid, &c. whereupon by our writ we commanded you, that without delay

you should cause the cattle goods and chattels aforesaid to be returned to the said *C. D.* and that you should not deliver them, on the complaint of the said *A. B.* without our writ, which should make express mention of the judgment aforesaid; and in what manner you should have executed that our writ, you should make appear to us, on ——— where-soever, &c. And you at that day returned to us, that before the coming of the writ aforesaid, the cattle goods and chattels aforesaid were seized and removed by the said *A. B.* to places to you unknown, so that you could not cause them to be returned to the said *C. D.* as by the said writ you were commanded: Therefore we command you, that you take in *withernam*, the cattle goods and chattels of the said *A. B.* to the value of the cattle goods and chattels aforesaid, by the said *C. D.* before taken, and cause them to be delivered to the said *C. D.* to be kept by him, until you can cause to be returned the said cattle goods and chattels, by the said *C. D.* before taken: And put by gages and safe pledges the said *A. B.* that he be before us on ——— wheresoever we shall then be in *England*, to answer as well to us for his contempt as to the said *C. D.* for the damages and injury to him in that behalf done: And in what manner you shall have executed this our writ, make appear to us, at the aforesaid time; and have there the names of the pledges, and this writ. Witness, &c.

George the Third, &c. To the sheriff of ———, greeting: Whereas *C. D.* was summoned to be in our court before us, &c. (as before, p. 377, B.) And the said *C. D.* appearing in our same court before us, for a certain reason by him alleged in the same court well avowed the taking of the said cattle goods and chattels, in the said place in which, &c. and justly, &c. for damage there done: And the said *A. B.* afterwards in our same court, made default; wherefore it was considered by the same court, that he and his pledges to prosecute should be in mercy, &c. and that the said *C. D.* should go thereof without day, &c. and that he should have a return of the said cattle goods and chattels, &c. Therefore we

(§ 32.)

The like, for want of a plea in bar, and *ea.* for the damages and costs.

lately commanded you, that without delay you should cause the cattle goods and chattels aforesaid to be returned to the said *C. D.* and that you should not deliver them, on the complaint of the said *A. B.* without our writ, which should make express mention of the judgment aforesaid; and in what manner you should have executed that our writ, you should make appear to us, on ——— wheresoever, &c. We also lately commanded you, that according to the form of the statute in such case made and provided, you should diligently enquire, by the oath of good and lawful men of your bailiwick, what damages the said *C. D.* had sustained, as well on occasion of the premises, as for his costs and charges by him laid out about his defence in this behalf; and that the inquisition which you should thereupon take, you should send to us, at the time aforesaid, wheresoever, &c. under your seal, &c. together with the writ aforesaid: And you at that day returned to us, that the cattle goods and chattels aforesaid were eloigned and removed by the said *A. B.* to places to you unknown, so that you could not cause the same to be returned to the said *C. D.* and you also returned to us, a certain inquisition taken before you, at ——— in your county, on the ——— day of ———, in the ——— year, &c. by which it was found, that the said *C. D.* had sustained damages, on occasion of the premises, besides his costs and charges, &c. to ———*l.* and for those costs and charges to ———*l.* Therefore it was considered, that the said *C. D.* should recover against the said *A. B.* his damages aforesaid, by the said inquisition in form aforesaid found, and also ———*l.* by our court before us adjudged of increase to the said *C. D.* and with his assent, for his costs and charges aforesaid; which said damages costs and charges in the whole amount to ———*l.* and that the said *A. B.* should be in mercy, &c. Therefore we command you, that you take in *withernam*, the cattle goods and chattels of the said *A. B.* in your bailiwick, to the value of the cattle goods and chattels before taken, and cause them to be delivered without delay to the said *C. D.* to hold to him irreplevisable, until the said *A. B.* shall make return to the said *C. D.* of the cattle goods and

chattels aforesaid, before taken; and in what manner you shall execute this our writ, make appear to us on — wheresoever, &c. We also command you, that you take the said *A. B.* if he be found in your bailiwick, and him safely keep, so that you may have his body before us, at the aforesaid time, wheresoever, &c. to satisfy the said *C. D.* of his damages costs and charges aforesaid; and have there this writ. Witness, &c.

judged to him the said *John Doe*, by reason of the trespass and ejectment aforesaid; therefore let the said *Richard Roe* be acquitted of those damages costs and charges, &c. And hereupon the said *John Doe* prays the writ of the said lord the king, to be directed to the sheriff of the county aforesaid, to cause him to have possession of his said term yet to come of and in the tenements aforesaid with the appurtenances; and it is granted to him, returnable before the said lord the king, on — wheresoever, &c.

(Entry of warrants of attorney, as in the last.)

— to wit. *Be it remembered*, that in — term last past, before our lord the king at *Westminster*, came *John Doe*, by *I. K.* his attorney, and brought into the court of our said lord the king before the king himself then there, his certain bill against *Richard Roe*, being in the custody of the marshal of the marshalsea of our said lord the king before the king himself, of a plea of trespass and ejectment; and there are pledges for the prosecution thereof, to wit, *John Doe* and *Richard Roe*, which said bill follows in these words, that is to say: — to wit. *John Doe* complains of *Richard Roe*, being in the custody, &c. (here copy the declaration to the end, omitting the pledges and notice, and then proceed on a new line as follows:)

(§ 2.)
The like by
bill.

And now at this day, that is to say, on the — day after — in this same term, until which day the said *Richard Roe* had leave to imparl to the said bill and then to answer the same, &c. before our said lord the king at *Westminster*, came as well the said *John Doe* by his attorney aforesaid, as the said *Richard Roe* in his proper person; and the said *Richard Roe* defends the force and injury when, &c. and says nothing in bar or preclusion, &c. (as before, making the writ of possession returnable on a day certain). — *And afterwards*, &c. (as before, p. 265. to, the words "tried and sworn" and then as follows:) say upon their oath, that the said *C. D.* is guilty of the trespass and ejectment within laid to his charge, in manner and form as the said *John Doe* hath within sworn

(§ 3.)
Postea for the
plaintiff, on
not guilty.

plained against him; and they assess the damages, &c. (as before, p. 295.)

(§ 4.)
The like, for
defendant.

Say upon their oath, that the said *C. D.* is not guilty of the trespass and ejectment within laid to his charge, in manner and form as the said *John Doe* hath within complained against him: Therefore, &c.

(§ 5.)
The like where
part is found
for the plain-
tiff, and part
for the defend-
ant.

— as to —, parcel of the tenements within-mentioned, say upon their oath, that the said *C. D.* is guilty of the trespass and ejectment within laid to his charge, in manner and form as the said *A. B.* hath within thereof complained against him; and they assess the damages, &c. And as to the residue of the tenements within-mentioned, the jurors aforesaid upon their oath aforesaid say, that the said *C. D.* is not guilty of the trespass and ejectment within laid to his charge, in manner and form, &c.: Therefore, &c.

(§ 6.)
The like, on a
nonsuit, for not
confessing
lease entry
and ouster.

Afterwards, that is to say, on — at —, before, &c. comes the within named *John Doe*, by his attorney within-mentioned, and the within-named *C. D.* although solemnly required, comes not, but makes default; therefore let the jurors of the jury, whereof mention is within made, be taken against him by his default; and the jurors of that jury being summoned also come, and to speak the truth of the matters within contained, being chosen tried and sworn, the said *C. D.* although solemnly called to appear, by himself or his counsel or attorney, to confess lease entry and ouster, doth not come, by himself or his counsel or attorney, nor doth he confess lease entry and ouster, but therein makes default; wherefore the said *John Doe* doth not further prosecute his writ (or bill) against the said *C. D.* Therefore, &c.

(§ 7.)
Special ver-
dict.

Afterwards, that is to say, on the day and at the place within contained, &c. (as in a common verdict, to the finding of the jury, which varies according to the facts of the case, and conclude as follows.) But whether or not upon the whole matter aforesaid, by the jurors aforesaid in form aforesaid found, the said

C. D. is guilty of the trespass and ejectment within specified, the jurors aforesaid are altogether ignorant; and thereupon they pray the advice of the court of our said lord the king, before the king himself: And if upon the whole matter aforesaid, it shall seem to the said court, that the said *C. D.* is guilty of the trespass and ejectment aforesaid, then the jurors aforesaid upon their oath aforesaid say, that the said *C. D.* is guilty thereof, in manner and form as the said *John Doe* hath within thereof complained against him; and in that case, they assess the damages of the said *John Doe*, on occasion of the trespass and ejectment aforesaid, besides his costs and charges by him about his suit in that behalf expended, to —*l.* and for those costs and charges to —*s.* But if upon the whole matter aforesaid, it shall seem to the said court, that the said *C. D.* is not guilty of the trespass and ejectment aforesaid, then the jurors aforesaid upon their oath aforesaid say, that the said *C. D.* is not guilty thereof, in manner and form as he hath within in pleading alleged. And because, &c.

As yet of — term, &c.

(Entry of warrants of attorney, as before, p. 384.)

— to wit. *C. D.* was attached to answer *John Doe*, &c. (copy the issue to the end of the award of the *venire facias*, and proceed as follows:.) At which day, before our said lord the king at Westminster, come the parties aforesaid, by their attorneys aforesaid; and hereupon the said *C. D.* relinquishing his said plea by him above pleaded, says that he cannot deny the action of the said *John Doe*, nor but that he the said *C. D.* is guilty of the trespass and ejectment above laid to his charge, in manner and form as the said *John Doe* hath above thereof complained against him; and he confesses and admits that the said *John Doe* hath sustained damages, by reason of the said trespass and ejectment, to the sum of —, besides his costs and charges by him about his suit in this behalf expended: And hereupon the said *John Doe* freely here in court remits to the said *C. D.* the residue of the damages in the said declaration mentioned; and he prays judgment, and his term yet to come of and in the tenements aforesaid.

(§ 2.) Judgment for the plaintiff, by cognovit actionem relicta verificatione, after issue joined, with a remittitur damna, by original.

Judgment
signed, &c.

with the appurtenances, together with his said damages so confessed, and his costs and charges aforesaid, to be adjudged to him, &c. Therefore it is considered, that the said *John Doe* do recover against the said *C. D.* his said term yet to come of and in the tenements aforesaid with the appurtenances, together with the damages aforesaid, to the said sum of —, in form aforesaid confessed, and also —*l.* for his said costs and charges, by the court of our said lord the king now here adjudged to the said *John Doe*, and with his assent; which said damages costs and charges in the whole amount to —*l.* And hereupon the said *John Doe* prays the writ of our said lord the king, to be directed to the sheriff of — aforesaid, to cause him to have possession of his said term yet to come of and in the tenements aforesaid with the appurtenances; and it is granted to him, returnable before our said lord the king, on —, wheresoever, &c.

(§ 8.)

The like, for the plaintiff, as to part of the premises, and for the defendant, on a *nolle prosequi*, as to the residue.

(To the end of the issue, and then as follows :)

At which day, before our said lord the king at *Westminster*, come the parties aforesaid, by their attorneys aforesaid; and hereupon the said *C. D.* as to —, parcel of the tenements in the said declaration mentioned, relinquishing his said plea by him above pleaded, says that he cannot deny the action of the said *John Doe*, nor but that he the said *C. D.* is guilty of the trespass and ejectment above laid to his charge, in manner and form as the said *John Doe* hath above thereof complained against him:

And upon this the said *John Doe* says that he will not further prosecute his suit against the said *C. D.* for the trespass and ejectment in the residue of the tenements aforesaid; and he prays judgment, and his term yet to come of and in the said —, with the appurtenances, parcel, &c. together with his damages costs and charges by him in this behalf sustained: Therefore it is considered, that the said *John Doe* do recover against the said *C. D.* his said term yet to come of and in the said — with the appurtenances, parcel, &c. and also —*l.* for his said damages costs and charges, by the court of our said lord the king now here adjudged to the said *John Doe*, and with his assent, and also with the

Judgment
signed, &c.

assent of the said *C. D.* And let the said *C. D.* be acquitted of the said trespass and ejectment in the residue of the tenements aforesaid, and go thereof without day, &c. And the said *John Doe* prays the writ of our said lord the king, to be directed to the sheriff of — aforesaid, to cause him to have possession of his said term yet to come of and in the said — with the appurtenances, parcel, &c. and it is granted to him, returnable before our said lord the king, on — wheresoever, &c.

(To the end of the *postea*, as in other cases, *mutatis mutandis*, and then as follows :) Therefore it is considered, that the said *John Doe* do recover against the said *C. D.* his said term yet to come of and in the tenements aforesaid with the appurtenances, and his said damages to — *l.* by the jurors aforesaid in form aforesaid assessed, and also — *l.* for his said costs and charges, by the court of our said lord the king now here adjudged of increase to the said *John Doe*, and with his assent; which said damages costs and charges in the whole amount to — *l.*: and let the said *C. D.* be taken, &c. And hereupon the said *John Doe* prays the writ of our said lord the king, to be directed to the sheriff of the county of — aforesaid; to cause him to have possession of his said term yet to come of and in the tenements aforesaid with the appurtenances; and it is granted to him, returnable before our said lord the king, on — wheresoever, &c.

(§ 9.)

The like, on verdict for the plaintiff.

Capiatur.

Therefore it is considered, that the said *John Doe* do recover against the said *C. D.* his said term yet to come of and in the said — parcel, &c. with the appurtenances, and the damages costs and charges aforesaid, by the jurors aforesaid in form aforesaid assessed; and also — *l.* for his said costs and charges, by the court of our said lord the king now here adjudged of increase to the said *John Doe*, and with his assent; which said damages costs and charges in the whole amount to — *l.*: And let the said *John Doe* be amerced for his false claim against the said *C. D.* as to the residue of the tenements in the said declaration mentioned, whereof the said *C. D.* is acquitted in form aforesaid; and

(§ 10.)

The like, for the plaintiff, as to part of the premises, and for the defendant as to the residue.

the said *C. D.* go thereof without day, &c. And hereupon the said *John Doe* prays the writ, &c. (as in the last.

(§ 11.)

The like, for the plaintiff, as to part of the premises, and *nolle prosequi* as to the residue, for which there was no finding by the jury; with award of *habere facias possessionem*, and return.

Judgment signed, &c.

Capiatur.

(To the end of the *postea*, and then as follows :) And thereupon the said *John Doe* freely here in court confesses, that he will not further prosecute his suit against the said *C. D.* as to the remaining three-fifths of the tenements in the said declaration mentioned; therefore, as to the said three-fifths of the tenements aforesaid, let the said *C. D.* be acquitted, and go thereof without day, &c.: And the said *John Doe* prays judgment, and his term yet to come of and in the said two-fifths of the tenements aforesaid, whereof the said *C. D.* is convicted, together with his damages costs and charges aforesaid: Therefore it is considered, that the said *John Doe* do recover against the said *C. D.* his said term yet to come of and in the said two-fifths of the tenements aforesaid with the appurtenances, and the damages costs and charges aforesaid, by the jurors aforesaid in form aforesaid assessed, and also — *l.* for his said costs and charges, by the court of our said lord the king now here adjudged of increase to the said *John Doe* and with his assent; which said damages costs and charges in the whole amount to — *l.*; and let the said *C. D.* be taken, &c. And hereupon the said *John Doe* prays the writ of our said lord the king, to be directed to the sheriff of the county of — aforesaid, to cause him to have possession of his said term yet to come of and in the said two-fifths of the tenements aforesaid with the appurtenances; and it is granted to him, returnable before our said lord the king, on — wheresoever, &c. At which day, before our said lord the king at *Westminster*, comes the said *John Doe* by his attorney aforesaid; and the sheriff, to wit, — sheriff of the said county, now here returns, that by virtue of the said writ to him directed, he had on the — day of — in the — year of the reign of our said lord the king, given full and peaceable possession unto the said *John Doe* of the said two-fifths of the tenements aforesaid with the appurtenances, in the said writ mentioned, as therein he was commanded.

Doe, on the demise of *A. B.* } Upon reading a rule (§ 12.)
 } made in this cause, Rule for execution against
Roe. } on —, and *E. F.* the casual ejector, where the
 therein-named having made himself defendant, in the said cause being produced
 the stead of the casual ejector, pursuant to the said rule, and the *postea* in the said cause being produced
 and read, and a rule made in the same cause this day; and the landlord had
 it is ordered that the said *E. F.* upon notice of this rule to be given to his attorney, &c. shew cause, why been made de-
 the plaintiff should not have leave to sue out execution, upon the judgment signed against the casual defendant, and
 ejector, pursuant to the first-mentioned rule. Upon failed at the
 the motion of Mr. — trial.

By the Court.

George the Third, &c. To the sheriff of — (§ 13.)
 greeting: Whereas *John Doe* lately in our court *Habere facias*
 before us at *Westminster*, by our writ, (or if by *bill*, *possessionem.*
 say “by bill without our writ,”) and by the judgment of the same court, recovered against *C. D.**
 his term then and yet to come of and in — dwelling-houses, &c. (as in the declaration in ejectment,) with the appurtenances, situate and being in the parish of — in your county, which *A. B.* on the — day of — in the — year of our reign, had demised to the said *John Doe*, to hold the same to the said *John Doe* and his assigns, from the — day of — then last past, for and during and unto the full end and term of — years from thence next ensuing, and fully to be complete and ended; by virtue of which said demise, the said *John Doe* entered into the said tenements with the appurtenances, and was possessed thereof, until the said *C. D.* afterwards, to wit, on the — day of — in the — year aforesaid, with force and arms, &c. entered into the said tenements with the appurtenances, which the said *A. B.* had demised to the said *John Doe*, in manner and for the term aforesaid, which was not then nor is yet expired, and ejected the said *John Doe* from his said farm; whereof the said *C. D.* is convicted, as appears to us of record: Therefore we command you, that without delay you cause the said *John Doe* to have the possession of his said term

* If the judgment was by default, the execution is against *Richard Roe*, the casual ejector.

yet to come of and in the tenements aforesaid with the appurtenances; and in what manner you shall have executed this our writ, make appear to us, on — wheresoever we shall then be in *England*; and have there this writ. Witness, &c.

(§ 14.)
The like, on a
double demise.

George the Third, &c. To the sheriff of — greeting: Whereas *John Doe* lately in our court before us at *Westminster*, by our writ, (or if by bill, say “by bill without our writ,”) and by the judgment of the same court, recovered against *C. D.* his term then and yet to come of and in — dwelling-houses, &c. (as in the declaration in ejectment) with the appurtenances, situate and being in the parish of — in your county, which *A. B.* on the — day of — in the — year of our reign, had demised to the said *John Doe*, to hold the same to the said *John Doe* and his assigns, from the — day of — in the — year aforesaid for and during, and unto the full end and term of — years from thence next ensuing, and fully to be complete and ended; and also his term then and yet to come of and in — other dwelling-houses, &c. with the appurtenances, which *E. F.* on the — day of — in the — year aforesaid, had demised to the said *John Doe*, to hold the same to the said *John Doe* and his assigns, from the — day of — in the — year aforesaid, for and during and unto the full end and term of — years from thence next ensuing, and fully to be complete and ended; by virtue of which said several demises, the said *John Doe* entered into the said several tenements with the appurtenances, and was possessed thereof, until the said *C. D.* afterwards, to wit, on the — day of — in the — year aforesaid, with force and arms, &c. entered into the said several tenements with the appurtenances, which the said *A. B.* and *E. F.* had respectively demised to the said *John Doe*, in manner and for the several terms aforesaid, which were not then nor are yet expired, and ejected the said *John Doe* from his said several farms; whereof the said *C. D.* is convicted, as appears to us of record: Therefore we command you, that without delay you cause the said *John Doe* to have the possession of his said several terms, yet to come of and in the said

several tenements with the appurtenances; and in what manner you shall have executed this our writ, make appear to us, on ——— wheresoever, &c.; and have there this writ. Witness, &c.

George the Third, &c. To our chancellor of our county-palatine of *Lancaster*, or to his deputy there, greeting: Whereas, &c. (as in the last writ, to the words “as appears to us of record,” and then as follows:) Therefore we command you, that by our writ, under the seal of our said county-palatine to be duly made, and directed to the sheriff of the same county, you command the said sheriff, that without delay he cause the said *John Doe* to have the possession of his several terms aforesaid, yet to come of and in the several tenements aforesaid with the appurtenances; and in what manner the said sheriff shall execute our said writ, let him certify to you, so that you may make the same known to us, on ——— wheresoever, &c.; and have there this writ. Witness, &c.

(§ 15.)
The like, to a county-palatine.

George the Third, &c. To the sheriff of ——— greeting: Whereas, &c. (as in the *habere facias*, to the return-day, and then as follows:) We also command you, that of the goods and chattels of the said *C. D.* in your bailiwick, you cause to be made ——— which the said *John Doe* lately in our said court before us at *Westminster* aforesaid, recovered against the said *C. D.* for his damages which he had sustained, as well on occasion of the trespass and ejection aforesaid, as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* is also convicted, as appears to us of record: And have you the said monies before us, on the return-day aforesaid, wheresoever, &c. to render to the said *John Doe*, for his damages aforesaid; and have there this writ. Witness, &c.

(§ 16.)
The like, and *feri facias* for costs.

George the Third, &c. To the sheriff of ——— greeting: Whereas, &c. (as in the *habere facias possessionem*, to the return-day, and then as follows:) We also command you, that you take the said *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us, on

(§ 17.)
The like, and *capias ad satisfaciendum* for costs.

the return-day aforesaid, wheresoever, &c. to satisfy the said *John Doe* — *l.* which in our said court before us at *Westminster* aforesaid, were adjudged to the said *John Doe*, for his damages which he had sustained, as well on occasion of the trespass and ejectment aforesaid, as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* is also convicted, as appears to us of record; and have there this writ. Witness, &c.

(§ 18.)

Affidavit of demand and refusal, &c. to found attachment for non-payment of costs.

In the King's Bench.

John Doe, on the demise of

A. B. plaintiff,

and

C. D. defendant.

Between

L. M. of — gent. maketh oath and saith, that he this deponent did on — the — day of — instant (or last), personally serve the above-named *A. B.* with the rule or order for the payment of costs, on account of his not having proceeded to trial pursuant to his notice, and the master's *allocatur* thereon, and also with the consent rule, and writ of *capias ad satisfaciendum* under the seal of this honourable court, hereunto annexed, by delivering unto him the said *A. B.* true copies thereof respectively; and at the same time, he this deponent shewed the said original rules, *allocatur* and writ of *capias ad satisfaciendum*, to the said *A. B.* and demanded of him the payment of the sum of — *l.* taxed upon the said first-mentioned rule or order, and also of the further sum of — *l.* being the costs adjudged to him this deponent, on the final judgment obtained in the above action, as appears by the master's *allocatur* on the said first-mentioned rule or order, and by the said writ of *capias ad satisfaciendum*. But the said *A. B.* refused to pay the same, or any part thereof, and the same are still wholly due and unpaid.

Sworn, &c.

FORMS.

Of EXECUTION.*

GEORGE the Third, &c. To the sheriff of ———
greeting: We command you, that of the goods and
chattels of *C. D.* in your bailiwick, you cause to be
made ——— *l.* which *A. B.* lately in our court before
us at *Westminster*, recovered against him, for his
damages which he had sustained, as well on occa-
sion of the not performing certain promises and un-
dertakings, then lately made by the said *C. D.* to
the said *A. B.* as for his costs and charges by him
about his suit in that behalf expended; whereof the
said *C. D.* is convicted, as appears to us of record:
And have that money before us at *Westminster*, on
—— next after ——, to render to the said *A. B.*
for his damages aforesaid; and have there then this
writ.† Witness *Edward Lord Ellenborough* at

(§ 1.)

*Fieri facias in
assumpsit.*

* The forms of Execution in *Replevin* and *Ejectment*, are at-
tached to the forms of Judgments in those actions, ante.

† This and the following writs are drawn, as if the proceedings
were by *bill*; but they may be easily adapted to proceedings by
original, by making them returnable on a general return-day,
wheresoever, &c. and instead of the words, "have there then this
writ," by saying, "have there this writ."

Westminster, the — day of — in the — year of our reign.

Way.

(§ 2.)
The like, by
and against
surviving part-
ners.

George the Third, &c. To the sheriff of — greeting: We command you, that of the goods and chattels of *G. H.* and *J. K.* in your bailiwick, you cause to be made — *l.* which *A. B. C. D.* and *E. F.* in the life-time of the said *E. F.* now deceased, and whom the said *A. B.* and *C. D.* have survived, lately in our court before us at *Westminster*, recovered against them the said *G. H.* and *J. K.* and one *L. M.* in his life-time now deceased, and whom the said *G. H.* and *J. K.* have survived, for their damages which they had sustained, as well on occasion of the not performing certain promises and undertakings, then lately made by the said *G. H. J. K.* and *L. M.* to the said *A. B. C. D.* and *E. F.* as for their costs and charges, &c. whereof the said *G. H. J. K.* and *L. M.* are convicted, as appears to us of record: And have that money, &c. (as in the last.)

(§ 3.)
The like, for
an executor or
administrator,
on a judgment
by the testator
or intestate.

George the Third, &c. To the sheriff of — greeting: We command you, that of the goods and chattels of *C. D.* in your bailiwick, you cause to be made — *l.* which *A. B.* in his life-time lately in our court before us at *Westminster*, recovered against him, for his damages which he had sustained, &c. whereof the said *C. D.* is convicted, as appears to us of record: And whereupon it is considered in our said court before us, that *E. F.* executor of the last will and testament of the said *A. B.* deceased, (or administrator of all and singular the goods, chattels and credits, which were of the said *A. B.* deceased at the time of his death, who died intestate,) have execution against the said *C. D.* for the damages aforesaid, according to the force, form and effect of the said recovery, by the default of the said *C. D.* as also appears to us of record: And have that money before us at *Westminster*, on — next after — to render to the said *E. F.* executor (or administrator) as aforesaid, for the damages aforesaid; and have there then this writ. Witness, &c.

George the Third, &c. To the sheriff of —, greeting: We command you, that of the goods and chattels of *C. D.* in your bailiwick, you cause to be made —*l.* which *A. B.* executor of the last will and testament of *E. F.* deceased, (or administrator of all and singular the goods, chattels and credits which were of *E. F.* deceased at the time of his death, who died intestate,) lately in our court before us at *Westminster*, recovered against him, &c. whereof the said *C. D.* is convicted, as appears to us of record: And have that money, &c. (as in the last).

(§ 4.)

The like, upon judgment, by an executor or administrator.

George the Third, &c. To the sheriff of —, greeting: We command you, that of the goods and chattels which were of *C. D.* deceased at the time of his death, in the hands of *E. F.* executor, &c. (or administrator, &c.) to be administered, in your bailiwick, you cause to be made —*l.* which *A. B.* lately in our court before us at *Westminster*, recovered against the said *C. D.* for his damages, &c. whereof the said *C. D.* was convicted, as appears to us of record: And whereupon it is considered in our said court, before us at *Westminster* aforesaid, that the said *A. B.* have his execution against the said *E. F.* as executor (or administrator) as aforesaid, of the damages aforesaid, of the goods and chattels which were of the said *C. D.* at the time of his death, in the hands of the said *E. F.* as executor (or administrator) as aforesaid to be administered, according to the form and effect of the said recovery: And have that money, &c. (as before, p. 395) and have there then this writ. Witness, &c.

(§ 5.)

The like, against an executor or administrator, on a judgment against the testator or intestate.

George the Third, &c. To the sheriff of —, greeting: We command you, that of the goods and chattels in your bailiwick, which were of *E. F.* deceased at the time of his death, in the hands of *C. D.* executor, &c. (or administrator, &c.) to be administered, you cause to be made —*l.* which *A. B.* lately in our court before us at *Westminster*, recovered against the said *C. D.* as executor (or administrator) as aforesaid, for his damages which he had sustained, as well on occasion of the not per-

(§ 6.)

The like, on a judgment against an executor or administrator, *de bonis testatoris, &c.*

forming certain promises and undertakings, made by the said *E. F.* in his life-time to the said *A. B.* as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* is convicted, as appears to us of record, if the said *C. D.* hath so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered, then that you cause to be made — *l.* parcel of the damages aforesaid, being for the costs and charges aforesaid, of the proper goods and chattels of the said *C. D.* in your bailiwick; and have that money, &c. (as before, p. 395.)

(§ 7.)
Fieri facias, in
debt.

George the Third, &c. To the sheriff of —, greeting: We command you, that of the goods and chattels of *C. D.* in your bailiwick, you cause to be made a certain debt of — *l.* which *A. B.* lately in our court before us at *Westminster*, recovered against him, and also — *l.* which in our same court before us at *Westminster* aforesaid, were adjudged to the said *A. B.* for his damages which he had sustained, as well on occasion of the detention of the said debt, as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* is convicted, as appears to us of record: And have that money before us at *Westminster*, on — next after —, to render to the said *A. B.* for his debt and damages aforesaid; and have there then this writ. Witness, &c.

(§ 8.)
The like, in
debt *qui tam*.

George the Third, &c. To the sheriff of —, greeting: We command you, that of the goods and chattels of *C. D.* in your bailiwick, you cause to be made a certain debt of — *l.* which *A. B.* who sued as well for us as for himself in that behalf, lately in our court before us at *Westminster*, recovered against the said *C. D.* that is to say, one moiety thereof to the said *A. B.* who sued as aforesaid, to his own proper use, and the other moiety thereof to our own proper use, (and if the judgment was for costs, add, “and also — *l.* which in our said court before us were adjudged to the said *A. B.* who sued as aforesaid, and with his assent, according to the form of the statute in such case made and

provided, for his costs and charges by him about his suit in that behalf expended;") whereof the said *C. D.* is convicted, as appears to us of record : And have that money before us at *Westminster*, on — next after — to render one moiety thereof to us, and the other moiety thereof to the said *A. B.* who sued as aforesaid; (or if there are costs, "one moiety of the said debt of —*l.* to us, and the residue thereof, as well as the said sum of —*l.* for the costs and charges aforesaid, to the said *A. B.* who sued as aforesaid:") and have there then this writ. Witness, &c.

George the Third, &c. To the sheriff of —, greeting : We command you, that of the goods and chattels of *C. D.* in your bailiwick, you cause to be made a certain debt of —*l.* which *A. B.* lately in our court before us at *Westminster*, recovered against him, and also —*l.* which in our same court were adjudged to the said *A. B.* for his damages which he had sustained, as well on occasion of the detention of the said debt, and of a certain metal watch, which the said *A. B.* also in our said court before us at *Westminster* aforesaid, recovered against him, as for his costs and charges by him about his suit in that behalf expended ; whereof the said *C. D.* is convicted, as appears to us of record : And have that money, &c. : We also command you, that you distrain the said *C. D.* by all his lands and chattels in your bailiwick, so that neither he nor any one by him do lay hands on the same, until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that he render the said watch to the said *A. B.* ; whereof the said *C. D.* is also convicted, as appears to us of record : And have there then this writ. Witness, &c.

(§ 9.)
The like, in debt, and *distringas* in detinue, on stat. 9 Ann. c. 14.

George the third, &c. To the sheriff of —, greeting : We command you, that of the goods and chattels of *G. H.* and *J. K.* in your bailiwick, you cause to be made a certain debt of —*l.* which *A. B.*, *C. D.*, and *E. F.* in his life-time of the said *E. F.* now deceased, and whom the said *A. B.* and *C. D.* have survived, lately in our court before us

(§ 10.)
The like, in debt, by and against surviving partners.

at *Westminster*, recovered against the said *G. H.* and *J. K.* and *L. M.* in his life-time now deceased, and whom the said *G. H.* and *J. K.* have survived, and also — *l.* which in our same court before us at *Westminster* aforesaid, were adjudged to the said *A. B.*, *C. D.*, and *E. F.*, for their damages, &c. whereof the said *G. H.*, *J. K.*, and *L. M.* were convicted, as appears to us of record: And have that money, &c. (as before, p. 395.)

(§ 11.)
The like, against an executor or administrator, *de bonis testatoris*, &c.;

George the Third, &c. To the sheriff of —, greeting: We command you, that of the goods and chattels, &c. you cause to be made a certain debt of — *l.* which *A. B.* lately in our court before us at *Westminster*, recovered against the said *C. D.* as executor (or administrator) as aforesaid, and also — *l.* which in our said court before us at *Westminster* aforesaid, were adjudged to the said *A. B.* for his damages, &c. (as in a common *fiat facias* in debt,) if the said *C. D.* hath so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered, then that you cause the damages aforesaid to be made of the proper goods and chattels in your bailiwick of the said *C. D.* And have that money, &c. (as before, p. 395.)

(§ 12.)
Fieri facias in covenant.

George the Third, &c. To the sheriff of —, greeting: We command you, that of the goods and chattels of *C. D.* in your bailiwick, you cause to be made — *l.* which *A. B.* lately in our court before us at *Westminster*, recovered against the said *C. D.* for his damages which he had sustained; as well on occasion of the breach of a certain covenant made between the said *A. B.* and the said *C. D.* as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* is convicted, as appears to us of record: And have that money, &c. (as before, p. 395.)

(§ 13.)
In case.

For his damages which he had sustained, as well on occasion of a certain grievance then lately committed by the said *C. D.* to the said *A. B.* as for his costs, &c.

For his damages which he had sustained, as well (§ 14.)
on occasion of the converting and disposing of cer- In trover.
tain goods and chattels of the said *A. B.* by the said
C. D. as for his costs, &c.

For his damages which he had sustained, as well (§ 15.)
on occasion of the speaking and publishing of cer- In an action
tain, false, scandalous, malicious, and defamatory for words.
words, then lately spoken and published by the said
C. D. to of and concerning the said *A. B.* as for his
costs, &c.

For his damages which he had sustained, as well (§ 16.)
on occasion of a certain trespass then lately com- In trespass.
mitted by the said *C. D.* as for his costs, &c.

For his damages which he had sustained, as well (§ 17.)
on occasion of a certain trespass and assault then In trespass and
lately committed by the said *C. D.* on the said *A. B.* assault.
as for his costs, &c.

George the Third, &c. To the chancellor of our (§ 18.)
county-palatine of *Lancaster*, or to his deputy there, To a county-
greeting: We command you, that by our writ un- palatine.
der the seal of our said county-palatine to be duly
made, and directed to the sheriff of the same county,
you command the said sheriff, that of the goods and
chattels of *C. D.* in his bailiwick, he cause to be
made, &c. whereof the said *C. D.* is convicted, as
appears to us of record: And have you that money
before us at *Westminster*, on — next after —
to render to the said *A. B.* for his damages (or debt
and damages) aforesaid; and have there then this
writ. Witness, &c.

(As in a common *fieri facias*, to the words, (§ 19.)
“whereof the said *C. D.* is convicted, as appears to After *scire fa-*
us of record:”) And whereupon it is considered in *cias*, by default.
our same court before us, that the said *A. B.* have
his execution against the said *C. D.* of the damages
(or debt and damages) aforesaid, according to the
force, form and effect of the said recovery, by the
default of the said *C. D.* as also appears to us of re-
cord: And have that money, &c. (as before, p. 395).

(§ 20.)
The like, after
plea or demur-
rer.

— whereof the said *C. D.* is convicted, &c. and also — *l.* which in our said court before us were adjudged to the said *A. B.* according to the form of the statute in such case made and provided, for his costs and charges by him laid out in and about the prosecution of our writ of *scire facias*, for having execution upon the said judgment, for the damages (or debt and damages) aforesaid: And whereupon it was after plea pleaded (or demurrer joined) therein, considered in our same court before us, that the said *A. B.* should have his execution against the said *C. D.* of the damages (or debt and damages) aforesaid, according to the force, form and effect of the said recovery, as also appears to us of record: And have the said monies, &c. (as before, p. 395.)

(§ 21.)
The like, a-
gainst the
lands, &c. of a
defendant dis-
charged under
an insolvent
act, with a ca.
sa. for the costs
in *scire facias*.

George the third, &c. To the sheriff of —, greeting: We command you, that of the lands goods and chattels of *C. D.* in your bailiwick, you cause to be levied and made a certain debt of — *l.* which *A. B.* lately in our court before us at *Westminster*, recovered against him, and also — *l.* which in our said court were adjudged to the said *A. B.* for his damages which he had sustained, as well on occasion of the detention of the said debt, as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* was convicted, as appears to us of record: And whereupon it is considered, in our same court before us, that the said *A. B.* have his execution against the said *C. D.* for the debt and damages aforesaid, to be levied not on the person, but on the lands, goods and chattels of the said *C. D.* as also appears to us of record: And have that money before us at *Westminster*, on — next after —, to render to the said *A. B.* for his debt and damages aforesaid; We also command you, that you take the said *C. D.* if he be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster*, on the return-day aforesaid, to satisfy the said *A. B.* — *l.* which in our said court before us were adjudged to the said *A. B.* according to the form of the statute in such case made and provided, for his costs and charges by

him laid out in and about the prosecution of our writ of *scire facias*, for having execution upon the said first-mentioned judgment, for the debt and damages aforesaid: And have there then this writ. Witness, &c.

Afterwards, to wit, on the — day of — in this same term, the said *A. B.* comes here into court by his attorney aforesaid, and prays the writ of the lord the king of *fieri facias*, to be directed to the sheriff of —, commanding him that of the goods and chattels of the said *C. D.* in his bailiwick, he cause to be made the damages (or debt and damages) aforesaid; and it is granted to him, returnable before the said lord the king at *Westminster*, on — next after —; the same day is given to the said *A. B.* at the same place: At which day, before the said lord the king at *Westminster*, comes the said *A. B.* by his attorney aforesaid; and the said sheriff of — hath not sent the said writ, nor hath he done any thing thereupon: Therefore, as before, let another writ be thereupon made, and directed to the said sheriff of —, commanding him in form aforesaid; and it is granted, &c. returnable before the said lord the king at *Westminster*, on — next after —; the same day is given to the said *A. B.* at the same place.

(§ 22.)

Entry of *fieri facias* on the roll, and award of *alias*.

George the Third, &c. To the sheriff of —, greeting: We command you, that of the goods and chattels of *A. B.* in your bailiwick, you cause to be made — *l.* which lately in our court before us at *Westminster*, were adjudged to *C. D.* according to the form of the statute in such case made and provided, for his costs and charges by him laid out in and about his defence of and upon a certain precept called a bill of *Middlesex*, (or our certain writ of — *l.*) issued out of our said court before us, at the suit of the said *A. B.* against the said *C. D.* for that the said *A. B.* had not declared thereupon, in our said court before us, by his bill or declaration in any personal action or ejectment against the said *C. D.* before the end of — term, in the — year of our reign, being the next term after the appearance of the said *C. D.* at the suit of the said *A. B.* whereof

(§ 23.)

Fieri facias on a *non-pros*, for not declaring on a bill of *Middlesex* or *latitat*, &c.

the said *A. B.* is convicted, as appears to us of record: And have that money before us at *Westminster*, on — next after —, to render to the said *C. D.* for his costs and charges aforesaid; and have there then this writ. Witness, &c.

(§ 24.)
The like, by
original.

For his costs and charges by him laid out in and about his defence in a certain plea of trespass on the case upon promises, to the damage of the said *A. B.* of — (or as the plea is) then lately commenced and depending in our said court before us, at the suit of the said *A. B.* against the said *C. D.* for that the said *A. B.* had not prosecuted his writ against the said *C. D.* in the plea aforesaid; whereof the said *A. B.* is convicted, &c. (as in the last.)

(§ 25.)
The like, for
not replying.

For his costs and charges by him laid out in and about his defence in a certain action of trespass on the case upon promises (or as the action is), then lately commenced and depending in our said court before us, at the suit of the said *A. B.* against the said *C. D.* for that the said *A. B.* had not replied to certain pleas then lately pleaded by the said *C. D.* in the said action, or further prosecuted the same; whereof the said *A. B.* is convicted, &c. (as in the two last.)

(§ 26.)
The like, for
not surrejoins-
ing.

For his costs and charges, &c. for that the said *A. B.* had not surrejoined to certain rejoinders then lately made by the said *C. D.* in the said action, or further prosecuted the same; whereof, &c. (as before.)

(§ 27.)
The like, for
not entering
the issue.

For his costs and charges, &c. for that the said *A. B.* had not entered a certain issue (or certain issues) then lately joined between the said *A. B.* and the said *C. D.* in the said action, or further prosecuted the same; whereof, &c. (as before.)

(§ 28.)
The like, on a
judgment as in
case of a non-
suit.

For his costs and charges, &c. for that the said *A. B.* had neglected to bring a certain issue before then joined in the said action, on to be tried, according to the course and practice of the said court; whereof, &c. (as before.)

For his costs and charges by him laid out in and about his defence in a certain action of trespass on the case upon promises (or as the action is), lately brought in our said court before us, by the said *A. B.* against the said *C. D.* for that the said *A. B.* did not prosecute the said action ; whereof, &c. (as before.)

(§ 31.)
The like, on a nonsuit.

For his costs and charges by him laid out in and about his defence in a certain action of trespass on the case upon promises (or as the action is) lately prosecuted in our said court before us, by the said *A. B.* against the said *C. D.* whereof, &c. (as before.)

(§ 32.)
The like, on a verdict for defendant.

The within-named *C. D.* has no goods or chattels in my bailiwick, whereof I can cause to be made the damages (or debt and damages) within mentioned, or any part thereof, according to the exigency of this writ.

(§ 33.)
Return of *nulla bona*.

The answer of — sheriff.

The within-named *C. D.* has no goods or chattels, nor any lay fee, in my bailiwick, whereof I can cause to be made the damages (or debt and damages) within-mentioned, or any part thereof, as within I am commanded ; but I do hereby certify, that the said *C. D.* is a beneficed clerk, to wit, rector of the rectory (or vicar of the vicarage) and parish church of — in my county ; which said rectory (or vicarage) and parish church are within the diocese of the reverend father in God — by divine permission, lord bishop of —.

(§ 34.)
Nulla bona, and that the defendant is a beneficed clerk, &c.

The answer, &c.

The within-named *C. D.* has no goods or chattels which were of the within-named *E. F.* at the time of his death, in his hands to be administered, in my bailiwick, whereof I can cause to be made the damages (or debt and damages) within-mentioned, or any part thereof ; and he has not any of his own proper goods or chattels, in my bailiwick, whereof

(§ 35.)
Nulla bona testatoris nec propria, in an action against an executor or administrator.

D d

the said *A. B.* is convicted, as appears to us of record: And have that money before us at *Westminster*, on — next after —, to render to the said *C. D.* for his costs and charges aforesaid; and have there then this writ. Witness, &c.

(§ 24.)
The like, by
original.

For his costs and charges by him laid out in and about his defence in a certain plea of trespass on the case upon promises, to the damage of the said *A. B.* of — (or as the plea is) then lately commenced and depending in our said court before us, at the suit of the said *A. B.* against the said *C. D.* for that the said *A. B.* had not prosecuted his writ against the said *C. D.* in the plea aforesaid; whereof the said *A. B.* is convicted, &c. (as in the last.)

(§ 25.)
The like, by
not replying.

For his costs and charges by him laid out in and about his defence in a certain action of trespass on the case upon promises (or as the action is), then lately commenced and depending in our said court before us, at the suit of the said *A. B.* against the said *C. D.* for that the said *A. B.* had not replied to certain pleas then lately pleaded by the said *C. D.* in the said action, or further prosecuted the same; whereof the said *A. B.* is convicted, &c. (as in the two last.)

(§ 26.)
The like, for
not surrejoins-
ing.

For his costs and charges, &c. for that the said *A. B.* had not surrejoined to certain rejoinders then lately made by the said *C. D.* in the said action, or further prosecuted the same; whereof, &c. (as before.)

(§ 27.)
The like, for
not entering
the issue.

For his costs and charges, &c. for that the said *A. B.* had not entered a certain issue (or certain issues) then lately joined between the said *A. B.* and the said *C. D.* in the said action, or further prosecuted the same; whereof, &c. (as before.)

(§ 28.)
The like, on a
judgment as in
case of a non-
suit.

For his costs and charges, &c. for that the said *A. B.* had neglected to bring a certain issue before then joined in the said action, on to be tried, according to the course and practice of the said court; whereof, &c. (as before.)

For his costs and charges by him laid out in and about his defence in a certain action of trespass on the case upon promises (or as the action is), lately brought in our said court before us, by the said *A. B.* against the said *C. D.* for that the said *A. B.* did not prosecute the said action ; whereof, &c. (as before.)

(§ 31.)

The like, on a nonsuit.

For his costs and charges by him laid out in and about his defence in a certain action of trespass on the case upon promises (or as the action is) lately prosecuted in our said court before us, by the said *A. B.* against the said *C. D.* whereof, &c. (as before.)

(§ 32.)

The like, on a verdict for defendant.

The within-named *C. D.* has no goods or chattels in my bailiwick, whereof I can cause to be made the damages (or debt and damages) within mentioned, or any part thereof, according to the exigency of this writ.

(§ 33.)

Return of *nulla bona*.

The answer of — sheriff.

The within-named *C. D.* has no goods or chattels, nor any lay fee, in my bailiwick, whereof I can cause to be made the damages (or debt and damages) within-mentioned, or any part thereof, as within I am commanded ; but I do hereby certify, that the said *C. D.* is a beneficed clerk, to wit, rector of the rectory (or vicar of the vicarage) and parish church of — in my county ; which said rectory (or vicarage) and parish church are within the diocese of the reverend father in God — by divine permission, lord bishop of —.

(§ 34.)

Nulla bona, and that the defendant is a beneficed clerk, &c.

The answer, &c.

The within-named *C. D.* has no goods or chattels which were of the within-named *E. F.* at the time of his death, in his hands to be administered, in my bailiwick, whereof I can cause to be made the damages (or debt and damages) within-mentioned, or any part thereof ; and he has not any of his own proper goods or chattels, in my bailiwick, whereof

(§ 35.)

Nulla bona testatoris nec propria, in an action against an executor or administrator.

D d

I can cause to be made the within-mentioned sum of — *l.* parcel, &c. (or in debt, "the damages aforesaid,") or any part thereof, according to the exigency of this writ.

The answer, &c.

(§ 36.)
The like, with
a *devastavit*.

The within-named *C. D.* has no goods or chattels, &c. (as before) but divers goods and chattels which were of the said *E. F.* at the time of his death, to the value of the damages (or debt and damages) within-mentioned, after the death of the said *E. F.* came to the hands of the said *C. D.* to be administered; which said goods and chattels the said *C. D.* hath before the coming of this writ to me directed, eloiigned, wasted, and converted to his own use.

The answer, &c.

(§ 37.)
Fieri feci.

By virtue of this writ to me directed, I have caused to be made of the goods and chattels of the within-named *C. D.* the damages (or debt and damages) within-mentioned; which I have ready before the lord the king, at the day and place within contained, to render to the said *A. B.* for his damages (or debt and damages) aforesaid, as within I am commanded.

The answer, &c.

(§ 38.)
The like, upon
a *mandavi bali-*
vo.

By virtue, &c. I made my mandate to the bailiff of *E. F.* esquire, of his liberty of —, who hath the execution and return of all writs and process within the said liberty, and without whom no execution of this writ could be made by me within the same; which said bailiff hath returned to me, that by virtue of my said mandate to him thereupon directed, he hath caused to be made of the goods and chattels of the within-named *C. D.* the damages (or debt and damages) within-mentioned; and that he hath that money ready before the lord the king, at the day and place within contained, as by my said mandate he was commanded.

The answer, &c.

(§ 39.)
Fieri feci for
part, and *nulla*
bona as to the
residue.

By virtue, &c. I have caused to be made of the goods and chattels of the within-named *C. D.* the sum of — *l.* which money I have ready before

the lord the king, at the day and place within contained, to render to the said *A. B.* in part of his damages (or debt and damages) within-mentioned: And I further certify to our said lord the king, that the said *C. D.* has not any other or more goods or chattels in my bailiwick, whereof I can cause to be made the residue of the damages (or debt and damages) aforesaid, according to the exigency of this writ.

The answer, &c.

By virtue of this writ to me directed, I have caused to be made of the goods and chattels of the within-named *C. D.* to the value of — *l.* And I further certify, that I have paid to — the landlord of the premises on which the said goods and chattels were taken, the sum of — *l.* for — rent due to him for the said premises at — last; and that I have retained in my hands the sum of — *l.* for poundage upon the said sum of — *l.* making together with the said sum of — *l.* the sum of — *l.* and the remaining sum of — *l.* I have ready, as within I am commanded: And the said *C. D.* hath not any other or more goods or chattels in my bailiwick, whereof I can cause to be made the residue of the damages (or debt and damages) within-mentioned, or any part thereof.

The answer, &c.

By virtue, &c. I have sent my mandate to the bailiff of the liberty of — in my county, who hath the execution and return of all writs and process within the same liberty, and without whom no execution of this writ by me could be made within the same liberty; which said bailiff hath answered me, that by virtue of the said mandate to him directed, he took in execution divers goods and chattels of the within-named *C. D.* which he kept possession of for the space of — days, and at the expiration of that time sold by public auction, by the direction of *E. F.* the attorney of and for the within-named *A. B.* and that the said *E. F.* as such attorney of and for the said *A. B.* was the highest bidder for, and declared the buyer at such sale of divers of the said goods and chattels, to the amount of — *l.*

D d 2

(§ 40)

The like, and that the sheriff has paid part of the sum levied to the landlord for rent.

(§ 41.)

The like, upon a *mandavi baliu*, under special circumstances.

which sum still remains unpaid; and that the said bailiff caused to be made of the said goods and chattels so taken in execution, over and besides the said sum of — *l.* the sum of — *l.* out of which last-mentioned sum of money he paid to *G. H.* the landlord of the premises whereon the said goods and chattels were taken, the sum of — *l.* for rent due to him at — last; and that he also paid the sum of — *l.* for king's taxes, due for and in respect of the said premises, at the time of taking the said goods and chattels; and that he hath retained the sum of — *l.* with the consent of the said *E. F.* for the necessary charges and expences of, and attending the keeping possession of and selling the said goods and chattels by auction as aforesaid, and also the sum of — *l.* for poundage; and the remainder of the said sum of — *l.* the said bailiff hath paid to me, and I have the same ready to render to the said *A. B.* as within I am commanded: And the said bailiff hath further answered me, that the said *C. D.* hath not any other or more goods or chattels in his liberty, whereof he can cause to be made the residue of the damages (or debt and damages) within-mentioned, or any part thereof: And I further certify and return, that the said *C. D.* hath not any other or more goods or chattels in my bailiwick, whereof I can cause to be made the residue of the damages (or debt and damages) aforesaid, or any part thereof.

The answer, &c.

(§ 42.)
That the sheriff has taken goods, which remain in his hands for want of buyers.

By virtue, &c. I have taken goods and chattels of the within-named *C. D.* to the value of the damages (or debt and damages) within-mentioned, which goods and chattels remain in my hands unsold, for want of buyers; therefore I cannot have that money before the lord the king, at the day and place within contained, as I am within commanded.

The answer, &c.

(§ 43.)
The like, where part of the goods have been sold, and the rest remain in his hands, &c.

By virtue, &c. I have taken goods and chattels of the within-named *C. D.* to the value of — *l.* and have exposed them to sale from day to day, and have thereof sold to the value of — *l.* which money I have ready before the lord the king, at the day and place within contained, to render to the within-

named *A. B.* as within I am commanded ; and the residue of the goods and chattels aforesaid still remain in my hands unsold, for want of buyers.

The answer, &c.

George the Third, &c. To the sheriff of ——— (§ 44.)
greeting : We command you, as before (or as oftentimes before) we have commanded you, that of the goods and chattels, &c. (as in the former writs, altering the return.) *Alias or pluries fieri facias.*

George the Third, &c. To the sheriff of ——— (§ 45.)
greeting : We command you, that you do not omit by reason of any liberty in your county, but that you enter the same, and of the goods and chattels, &c. (as before.) *Non omittas fieri facias.*

George the Third, &c. To the sheriff of ——— (§ 46.)
greeting : Whereas we lately commanded our sheriff of ——— that of the goods and chattels of *C. D.* in his bailiwick, he should cause to be made ——— *l.* which *A. B.* lately in our court before us at *Westminster*, recovered against him, for his damages, which he had sustained, as well on occasion of the not performing certain promises and undertakings, then lately made by the said *C. D.* to the said *A. B.* as for his costs and charges by him about his suit in that behalf expended ; whereof the said *C. D.* was convicted, as appeared to us of record ; and that the said sheriff of ——— should have that money before us at *Westminster*, on ——— next after ——— to render to the said *A. B.* for his damages aforesaid : And our said sheriff of ——— at that day returned to us, that the said *C. D.* had not any goods or chattels in his bailiwick, whereof he could cause to be made the damages aforesaid, or any part thereof : Whereupon on the behalf of the said *A. B.* it is sufficiently testified in our said court before us at *Westminster* aforesaid, that the said *C. D.* hath sufficient goods and chattels in your bailiwick, whereof you may cause to be made the damages aforesaid, and

every part thereof: Therefore we command you, that of the goods and chattels of the said *C. D.* in your bailiwick, you cause to be made the said ———l. for the damages aforesaid; and that you have that money before us at *Westminster*, on ——— next after ———, to render to the said *A. B.* for his damages aforesaid; and have there then this writ. Witness &c.

(§ 47.)
Entry of *feri*
facias and *testa-*
tum on the roll.

Afterwards, that is to say, on the ——— day of ——— in this same term, the said *A. B.* comes here into court, by his attorney aforesaid, and prays the writ of the said lord the king of *feri facias*, to be directed to the sheriff of ———, commanding him that of the goods and chattels of the said *C. D.* in his bailiwick, he cause to be made the damages (or debt and damages) aforesaid; and it is granted to him, returnable before the said lord the king at *Westminster*, on ——— next after ———; the same day is given to the said *A. B.* at the same place: At which day, before the said lord the king at *Westminster*, comes the said *A. B.* by his attorney aforesaid; and the sheriff, to wit, ——— sheriff of the county aforesaid, thereupon returns to the said lord the king at *Westminster*, aforesaid, that the said *C. D.* hath not any goods or chattels in his bailiwick, whereof he can cause to be made the damages (or debt and damages) aforesaid, or any part thereof: Whereupon on the behalf of the said *A. B.* it is sufficiently testified in the said court of the said lord the king before the king himself, that the said *C. D.* hath sufficient goods and chattels in the county of ———, whereof the sheriff of that county may cause to be made the damages (or debt and damages) aforesaid, and every part thereof: And thereupon the said *A. B.* prays the writ of the said lord the king of *testatum fieri facias*, to be directed to the sheriff of the said county of ———, commanding him that of the goods and chattels of the said *C. D.* in his bailiwick, he cause to be made the damages (or debt and damages) aforesaid; and it is granted to him, returnable before the said lord the king at *Westminster*, on ——— next after ———; the same day is given to the said *A. B.* at the same place: At which day, before the said lord the king at *Westminster*, comes the said *A. B.* by his attorney

aforesaid; and the said sheriff of — thereupon returns to the said lord the king at *Westminster* aforesaid, that he hath caused to be made of the goods and chattels of the said *C. D.* in his bailiwick, the sum of — *l.* which money he has paid to the said *A. B.* in part satisfaction of the damages (or debt and damages) aforesaid; and that the said *C. D.* hath not any other or more goods or chattels in his bailiwick, whereof he can cause to be made the residue of the damages (or debt and damages) aforesaid, or any part thereof.

George the Third, &c. To our chancellor of our county-palatine of *Lancaster*, or to his deputy there, greeting: Whereas we lately commanded our sheriff of — that of the goods and chattels of *C. D.* in his bailiwick, he should cause to be made, &c. (reciting the former writ to the end :) And our said sheriff of — at that day returned to us at *Westminster* aforesaid, that the said *C. D.* had not any goods or chattels in his bailiwick, whereof he could cause to be made the damages (or debt and damages) aforesaid, or any part thereof: Whereupon on behalf of the said *A. B.* it is sufficiently testified in our said court before us at *Westminster* aforesaid, that the said *C. D.* hath sufficient goods and chattels in our said county-palatine, whereof the damages (or debt and damages) aforesaid may be made: Therefore we command you, that by our writ under the seal of our said county-palatine to be duly made, and directed to the sheriff of the same county, you command the said sheriff, that of the goods and chattels of the said *C. D.* in his bailiwick, he cause to be made the damages (or debt and damages) aforesaid, so that you may have that money before us at *Westminster*, on — next after —, to render to the said *A. B.* for his damages (or debt and damages) aforesaid; and have there then this writ. Witness, &c.

(§ 48.)
Testatum fieri facias, into a county-palatine.

George the Third, &c. To the sheriff of — greeting: Whereas we lately commanded our chancellor of our county-palatine of *Lancaster*, that by our writ under the seal of our said county-palatine to be duly made, and directed to the sheriff of our

(§ 49.)
The like, from a county-palatine.

said county-palatine, he should command the said sheriff, that of the goods and chattels of *C. D.* in his bailiwick, he should cause to be made, &c. (reciting the former writ :) And our said chancellor of our said county-palatine at that day returned to us, that by virtue of the said writ to him directed, he had by another writ under the seal of our said county-palatine duly made, and directed to the sheriff of the same county, commanded the said sheriff, as by the said first-mentioned writ he was commanded ; which said sheriff, in answer to the said writ to him directed, had returned to our said chancellor, that the said *C. D.* had no goods or chattels in his bailiwick, whereof he could cause to be made the damages (or debt and damages) aforesaid, or any part thereof : Whereupon on behalf of the said *A. B.* it is sufficiently testified in our said court before us at *Westminster* aforesaid, that the said *C. D.* hath sufficient goods and chattels in your bailiwick, whereof you may cause to be made the damages (or debt and damages) aforesaid, and every part thereof : Therefore we command you, that of the goods and chattels of the said *C. D.* in your bailiwick, you cause to be made the damages (or debt and damages) aforesaid ; and have that money, &c. and have there then this writ. Witness, &c.

(§ 50.)

The like, from one county-palatine to another.

George the Third, &c. To the reverend father in God — by divine permission, lord bishop of *Durham*, or to his chancellor there, greeting : Whereas we lately commanded our chancellor of our county palatine of *Lancaster*, that by our writ under the seal of our said county-palatine to be duly made, and directed to the sheriff of our said county-palatine of *Lancaster*, he should command the same sheriff, that he should cause to be made, &c. (reciting the former writ :) And our said chancellor of our said county-palatine of *Lancaster* at that day returned to us, that by virtue of our said writ to him directed, he had by another writ, &c. (as in the last ;) which said sheriff, in answer to the said writ to him directed, had returned to our said chancellor, that the said *C. D.* had no goods or chattels in his bailiwick, whereof he could cause to be made the damages (or debt and damages) aforesaid, or any part

thereof: Whereupon on behalf of the said *A. B.* it is sufficiently testified in our said court before us at *Westminster* aforesaid, that the said *C. D.* hath sufficient goods and chattels in your bishoprick, whereof you may cause to be made the damages (or debt and damages) aforesaid, and every part thereof: Therefore we command you, that by our writ under the seal of your said bishoprick to be duly made, and directed to the sheriff of the county of *Durham*, you command the said sheriff, that of the goods and chattels of the said *C. D.* in his bailiwick, he cause to be made the damages (or debt and damages) aforesaid; and have that money, &c. and have there then this writ. Witness, &c.

George the Third, &c. To the reverend father in God —, by divine permission, lord bishop of — greeting: We command you that of the ecclesiastical goods of *C. D.* clerk, in your diocese, you cause to be made a certain debt of —l. which *A. B.* lately in our court before us at *Westminster*, recovered against him, and also —l. which in our said court before us at *Westminster* aforesaid, were adjudged to the said *A. B.* for his damages which he had sustained, as well on occasion of the detention of the said debt, as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* is convicted, as appears to us of record: And have that money before us at *Westminster*, on — next after —, to render to the said *A. B.* for his debt and damages aforesaid: And whereupon our sheriff of — returned to us at *Westminster* aforesaid, on — next after — in the same term, (or in — term last past,) that the said *C. D.* had not any goods or chattels, or any lay fee, in his bailiwick, whereof he could cause to be made the debt and damages aforesaid, or any part thereof; and that the said *C. D.* was a beneficed clerk, to wit, rector of the rectory (or vicar of the vicarage) and parish church of — in the said sheriff's county,

(§ 51.)

Fieri facias de bonis ecclesiasticis, in debt.

and within your diocese; and have there then this writ. Witness, &c.

(§ 52.) Entry thereof. The sheriff was commanded, that of the goods and chattels of *C. D.* in his bailiwick, he should cause to be made a certain debt of ———, which *A. B.* lately in the court of the lord the king before the king himself here, recovered against him, and also ———, which in the same court here were adjudged to the said *A. B.* for his damages which he had sustained, as well on occasion of the detention of the said debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* was convicted; and that the said sheriff should have that money before the said lord the king here, on this day, that is to say, on ——— next after ——— to render to the said *A. B.* for his debt and damages aforesaid: And now here at this day, comes the said *A. B.* by ——— his attorney; and the sheriff now here returns, that the said *C. D.* hath no goods or chattels, nor any lay fee, in his bailiwick, whereof he can cause to be made the debt and damages aforesaid, or any part thereof; and that the said *C. D.* is a beneficed clerk, to wit, rector of the rectory, (or vicar of the vicarage) and parish church of ——— in the said sheriff's county, and within the diocese of ———: Therefore it is commanded to the reverend father in God ——— by divine permission lord bishop of ——— that of the ecclesiastical goods of the said *C. D.* in his diocese, he cause to be made the debt and damages aforesaid; and that he have that money here on ——— next after ——— to render to the said *A. B.* for his debt and damages aforesaid, &c.

(§ 53.)
Sequestrari facias.

George the Third, &c. To the right reverend father in God ——— by divine permission, lord bishop of ——— greeting: Whereas we lately commanded our sheriff of ———, that he should cause to be made, &c. (reciting the former writ:) And whereupon our said sheriff of ——— on that day returned to us at *Westminster*, that the said *C. D.* was a beneficed clerk, to wit, rector of the rectory and parish church of ——— in the county of ——— and in your diocese, and had not any goods or chattels in

his bailiwick, whereof he could cause to be made the said debt and damages, or any part thereof: Therefore we command you, that you enter into the said rectory and parish church of — and take and sequester the same into your possession, and that you hold the same in your possession, until you shall have levied the said debt and damages, of the rents, tithes, oblations, obventions, fruits, issues, and profits thereof, and other ecclesiastical goods of the said *C. D.* in your diocese, to render to the said *A. B.* for his debt and damages aforesaid; whereof the said *C. D.* is convicted: And what you shall do therein, make appear to us at *Westminster*, on — next after —; and have there then this writ. Witness, &c.

George the Third, &c. To the reverend father in God — by divine permission, lord bishop of —, greeting: Whereas by our writ we lately commanded you, that of the ecclesiastical goods of *C. D.* clerk, in your diocese, you should cause to be made a certain debt of — *l.* which *A. B.* lately in our court before us at *Westminster*, recovered against him, and also — *l.* which in our said court before us at *Westminster* aforesaid, were adjudged to the said *A. B.* for his damages which he had sustained, as well on occasion of the detention of the said debt, as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* was convicted, as appeared to us of record; and that you should have that money before us at *Westminster*, on — next after — to render to the said *A. B.* for his debt and damages aforesaid: And whereupon our sheriff of — had then lately returned to us at *Westminster* aforesaid, that the said *C. D.* had no goods or chattels, nor any lay fee, in his bailiwick, whereof he could cause to be made the debt and damages aforesaid, or any part thereof; and that the said *C. D.* was a beneficed clerk, to wit, rector of the rectory (or vicar of the vicarage) and parish church of — in the said sheriff's county, and within your diocese: And you at that day returned to us, that by virtue of the said writ to you directed, you had caused to be made of the ecclesiastical goods of the said *C. D.* in your diocese,

(§ 54.)

*Testatum fieri
facias for the
residue, de bo-
nis ecclesiasticis.*

—*l.* parcel of the debt and damages aforesaid; and that the said *C. D.* had no ecclesiastical goods in your said diocese, whereof the residue of the debt and damages aforesaid, or any part thereof, could be made: Therefore we command you, that of the ecclesiastical goods of the said *C. D.* in your diocese, you cause to be made —*l.* residue of the debt and damages aforesaid; and that you have that money before us at *Westminster*, on — next after — to render to the said *A. B.* for the residue of his debt and damages aforesaid; and have there then this writ. Witness, &c.

(§ 55.)
Fieri facias to the archbishop, *de bonis ecclesiasticis*, during the vacancy of a bishop's see.

George the third, &c. To the right reverend father in God — by divine providence, archbishop of *Canterbury*, primate of all *England*, and metropolitan, greeting: We command you, that of the ecclesiastical goods of *C. D.* clerk, in the diocese of — which is within the province of *Canterbury*, as ordinary of that church, the episcopal see of — now being vacant, you cause to be made, &c. (as in the last.)

(§ 56.)
Sequestration.

— by divine permission, bishop of —. To our well-beloved in *Christ E. F.* of —, greeting: Whereas we have, with all due reverence, lately received his majesty's writ hereafter set forth, issuing out of his said majesty's court of King's Bench, in the words following, to wit: *George the Third, &c.* (here copy the *fieri facias de bonis ecclesiasticis* to the end, and then proceed as follows:) On which said writ, there was and is a certain indorsement in writing, directing us to levy —*l.* and the yearly payment of —*l.* besides all expences of sequestration and levy: We therefore, proceeding by virtue of and in obedience to the said writ, and inasmuch as in us lies duly executing the same, have sequestered all and singular the tithes, fruits, profits, oblations, obventions, and all other ecclesiastical rights and emoluments of and belonging to the rectory (or vicarage) and parish church of — in the county of — and diocese of —, of which the said *C. D.* mentioned in the said writ, is the present rector (or vicar); and by these presents do sequester the same, and give and grant unto you the said *E. F.* full

power and authority to sequestrate, collect, levy, gather and receive all and singular the tithes, fruits, profits, oblations, obventions, and all other ecclesiastical rights and emoluments of and belonging to the rectory (or vicarage) and parish church of — aforesaid, and the same to sell and dispose of, and the money arising therefrom to apply to and for the due payment of the debt and costs in the said writ mentioned, subject to the said indorsement on the said writ, and also subject to a decree made and interposed by us, on the — day of — in the year of our Lord 18—, in a certain cause or business depending before us in judgment against the said *C. D.* that the said fruits, profits, and emoluments whatsoever of the said rectory (or vicarage) and parish church of — should be sequestered for and during the space of three years, to the end that the said parish church and cure of souls within the same might be duly supplied with the performance of divine service, and that the parsonage-house, together with the other buildings and fences on the premises, might be put and kept in substantial repair, and that all duties and impositions incumbent on the said rectory (or vicarage), might be discharged, and subject also to the execution of the same decree; and also to publish or cause to be published this our present sequestration, in the parish church of — aforesaid, during the celebration of divine service therein, and in such fit terms, and in such fit places, as to you shall seem most proper and expedient: hereby requiring you to take care and provide, that during this our present sequestration, the cure of souls within the said parish of — be well duly and canonically supplied with the performance of divine service, by some fit and able minister, to be approved of or nominated by us or our successors, if occasion shall require, and that the said parsonage-house, together with the other buildings and fences on the premises, may be repaired and kept and continued in substantial repair, and all tenths, subsidies, procurations, synodals, and all other impositions, both ordinary and extraordinary whatsoever, incumbent on and payable out of the said rectory (or vicarage) be well and duly satisfied, answered and paid, during the continuance of this

our present sequestration; and lastly, that you make and render before us, or our vicar-general and official principal, or other competent judge in this behalf, a true, just and faithful account of and upon your receipts and disbursements in your office of sequestrator, when and at such time or times as you shall be thereunto lawfully required: In witness whereof, we have caused the seal of office of the worshipful ——— doctor of laws, our vicar-general and official principal, which we use in this behalf, to be affixed to these presents. Dated at ———, the ——— day of ———, in the year of our Lord 18—, and in the ——— year of our translation.

(§ 57.)
Fieri facias
against an ex-
ecutor or ad-
ministrator *de*
bonis propriis,
after a return
of *devastavit*.

George the Third, &c. To the sheriff of ———, greeting: Whereas we lately commanded you, that of the goods and chattels which were of *E. F.* deceased at the time of his death, in the hands of *C. D.* executor of the last will and testament of the said *E. F.* (or administrator of all and singular the goods chattels and credits which were of the said *E. F.* at the time of his death, who died intestate) to be administered in your bailiwick, you should cause to be made, &c. (reciting the *feri facias de bonis testatoris*, &c.) And you at that day returned to us, that the said *C. D.* had no goods or chattels, which were of the said *E. F.* &c. (reciting the sheriff's return): Therefore we command you, that of the proper goods and chattels of the said *C. D.* in your bailiwick, you cause to be made the said ———l. and have that money before us at *Westminster*, on ——— next after ——— to render to the said *A. B.* for his damages (or debt and damages) aforesaid; and have there then this writ. Witness, &c.

(§ 58.)
The like, after
a *devastavit* re-
turned on a *tes-*
tatum fieri fa-
cias.

George the Third, &c. To the sheriff of ———, greeting: Whereas we lately commanded our sheriff of ——— that of the goods and chattels, &c. (reciting the first writ of *feri facias de bonis testatoris*, &c.) And our said sheriff of ——— at that day returned to us at *Westminster* aforesaid, that the said

C. D. had no goods or chattels, &c. (reciting the sheriff's return of *nulla bona*, for which *vide ante*, p. 405.) Whereupon on behalf of the said *A. B.* it was sufficiently testified in our said court before us, that the said *C. D.* had sufficient goods and chattels, which were of the said *E. F.* at the time of his death, in the hands of him the said *C. D.* to be administered, in your bailiwick, whereof you might cause to be made the damages (or debt and damages) aforesaid; and we therefore commanded you, that of the goods and chattels, &c. (reciting the *testatum fieri facias de bonis testatoris*, &c.) And you at that day returned to us, &c. (reciting the return of *devastavit*, for which *vide ante*, p. 405.) Therefore we command you, that of the proper goods and chattels of the said *C. D.* in your bailiwick, you cause to be made the damages (or debt and damages) aforesaid; and have that money, &c. (as in the last.)

George the Third, &c. To the sheriff of —, greeting: Whereas by our writ we lately commanded you, that of the goods and chattels of *C. D.* in your bailiwick, you should cause to be made —l. which *A. B.* then lately in our court before us at *Westminster*, had recovered against *C. D.* for his damages which he had sustained, as well on occasion of the not performing certain promises and undertakings, then lately made by the said *C. D.* to the said *A. B.* as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* was convicted, as appeared to us of record; and that you should have that money before us at *Westminster*, on — next after —, to render to the said *A. B.* for his damages aforesaid: And you at that day returned to us, that by virtue of the said writ to you directed, you had caused to be made of the goods and chattels of the said *C. D.* —l. parcel of the damages aforesaid, which money you had ready at the day and place in the said writ contained, as by the said writ you were commanded; and that the said *C. D.* had not any other or more

(§ 39.)
Fieri facias for
the residue, in
assumpsit.

goods or chattels in your bailiwick, whereof you could cause to be made the residue of the damages aforesaid, or any part thereof: Therefore we command you, that of the goods and chattels of the said *C. D.* in your bailiwick, you cause to be made —*l.* residue of the damages aforesaid; and have that money before us at *Westminster*, on — next, after —, to render to the said *A. B.* for the residue of his damages aforesaid; and have there then this writ. Witness, &c.

(§ 60.)
The like, in
debt.

George the Third, &c. To the sheriff of —, greeting: Whereas we lately commanded you, that of the goods and chattels of *C. D.* in your bailiwick, you should cause to be made, &c. (to the end of the *fiery facias*): And you at that day returned to us at *Westminster*, that by virtue of the said writ to you directed, you had caused to be made of the goods and chattels of the said *C. D.* in your bailiwick, the sum of —*l.* parcel of the debt and damages aforesaid, which money you had ready before us, at the day and place in the said writ contained, as by the said writ you were commanded; and that the said *C. D.* had not any other or more goods and chattels in your bailiwick, whereof you could cause to be made the residue of the debt and damages aforesaid, or any part thereof: Therefore we command you, that of the goods and chattels of the said *C. D.* in your bailiwick you cause to be made —*l.* residue of the debt and damages aforesaid; and have that money before us at *Westminster*, on — next after —, to render to the said *A. B.* for the residue of his debt and damages aforesaid; and have there then this writ. Witness, &c.

(§ 61.)
Tee'atum fieri
facias for the
residue.

George the Third, &c. To the sheriff of —, greeting: Whereas by our writ we lately commanded our sheriff of —, that of the goods and chattels, &c. (to the end of the *fiery facias*, and then as follows:.) And our said sheriff of — at that day returned to us, that by virtue of the said writ to him directed, he had caused to be made of the goods and chattels of the said *C. D.* —*l.* parcel of the damages (or debt and damages) aforesaid, which money he had ready before us, at the day and place

in the said writ contained, as by the said writ he was commanded; and that the said *C. D.* had not any other or more goods or chattels in his bailiwick, whereof he could cause to be made the residue of the damages (or debt and damages) aforesaid, or any part thereof: And because it is sufficiently testified in our said court before us, that the said *C. D.* hath sufficient goods and chattels in your bailiwick, whereof you may cause to be made the residue of the damages (or debt and damages) aforesaid; therefore we command you, that of the goods and chattels of the said *C. D.* in your bailiwick, you cause to be made — *l.* residue of the damages (or debt and damages) aforesaid; and have that money before us at *Westminster*, on — next after —, to render to the said *A. B.* for the residue of his damages (or debt and damages) aforesaid; and have there then this writ. Witness, &c.

George the Third, &c. To the sheriff of —, greeting: Whereas by our writ we lately commanded our sheriff of —, that of the goods and chattels, &c. (here recite the first *fieri facias*): And our said sheriff of — at that day returned to us, that the said *C. D.* had not any goods or chattels in his bailiwick, whereof he could cause to be made the damages (or debt and damages) aforesaid, or any part thereof: And thereupon, on behalf of the said *A. B.* it was sufficiently testified in our said court before us, that the said *C. D.* had sufficient goods and chattels in your county, whereof the damages (or debt and damages) aforesaid might be fully made; whereupon, by our certain other writ, we commanded the then sheriff of your said county, that of the goods and chattels of the said *C. D.* in his bailiwick, he should cause to be made the damages (or debt and damages) aforesaid; and that he should have that money before us at *Westminster*, on — next after — last past, to render to the said *A. B.* for his damages (or debt and damages) aforesaid: And the said then sheriff of your said county on that day returned to us, that by virtue of the said writ to him directed, he had caused to be made, &c. (as in the last :) And now on behalf of the said *A. B.* it is further sufficiently testified in our said court before

(§ 62.)

The like, where part had been levied upon a testatum to a former sheriff.

us, that the said *C. D.* hath sufficient goods and chattels in your bailiwick, whereof the residue of the damages (or debt and damages) aforesaid may be fully made; Therefore we command you, that of the goods and chattels of the said *C. D.* in your bailiwick, you cause to be made —l. residue of the damages (or debt and damages) aforesaid; and have that money, &c. (as before, p. 305.)

(§ 63.)

The like, where the *testatum* issued into a county-palatine.

George the Third, &c. To our chancellor of our county-palatine of *Lancaster*, or to his deputy there, greeting: Whereas by our writ we lately commanded our sheriff of —, that of the goods and chattels, &c. (reciting the first *feri facias* :) And our said sheriff of — at that day returned to us, that the said *C. D.* had no goods or chattels in his bailiwick, whereof he could cause to be made the damages (or debt and damages) aforesaid, or any part thereof: And it was thereupon sufficiently testified in our said court before us, that the said *C. D.* had sufficient goods and chattels in our said county-palatine, whereof the damages (or debt and damages) aforesaid might be fully made: Whereupon by our writ of *testatum fieri facias*, we lately commanded our chancellor of our said county-palatine, that by our writ under the seal of our said county-palatine to be duly made, and directed to the sheriff of the said county, he should command the said sheriff, that of the goods and chattels of the said *C. D.* in his bailiwick, he should cause to be made the damages (or debt and damages) aforesaid; and that the said sheriff should have that money before us at *Westminster*, on — next after —, to render to the said *A. B.* for his damages (or debt and damages) aforesaid: And our said chancellor of our said county-palatine at that day returned to us, that by virtue of the said writ to him directed, he had by another writ under the seal of our said county-palatine duly made, and directed to the sheriff of the same county, commanded the said sheriff, as by the said writ of *testatum fieri facias* he was commanded; which said sheriff, in answer to the said last-mentioned writ, had returned to our said chancellor, that by virtue of the said writ to him di-

rected, he had caused to be made, &c. (as in the two former writs :) And now on behalf of the said *A. B.* it is further sufficiently testified in our said court before us, that the said *C. D.* hath sufficient goods and chattels in our said county-palatine, whereof the residue of the damages (or debt and damages) aforesaid may be fully made : Therefore we command you, that by our writ, under the seal of our said county-palatine to be duly made, and directed to the sheriff of the same county, you command the said sheriff, that of the goods and chattels of the said *C. D.* in his bailiwick, he cause to be made — *l.* residue of the damages (or debt and damages) aforesaid ; and that he have that money, &c. (as before, p. 395.)

George the Third, &c. To the sheriff of ——— (§ 64.)
greeting : Whereas by our writ we lately com- *Venditioni ex-*
manded you, that of the goods and chattels, &c. *ponas.*
(here recite the *feri facias* to the end :) And you at
that day returned to us at *Westminster* aforesaid,
that by virtue of the said writ to you directed, you
had taken goods and chattels of the said *C. D.* to
the value of the damages (or debt and damages)
aforesaid ; which said goods and chattels remained
in your hands unsold, for want of buyers : Therefore
we being desirous that the said *A. B.* should be sa-
tisfied his damages (or debt and damages) aforesaid,
command you, that you sell or cause to be sold the
goods and chattels of the said *C. D.* by you in form
aforesaid taken, and every part thereof, for the best
price that can be got for the same, and at least for
the damages (or debt and damages) aforesaid : And
have the money arising from such sale, before us at
Westminster, on ——— next after ——— to render to
the said *A. B.* for his damages (or debt and damages)
aforesaid ; and have there then this writ. Witness,
&c.

(§ 65.)

The like, for
part, and *feri*
facias for the
residue.

George the Third, &c. To the sheriff of ~~London~~
greeting: Whereas by our writ we lately com-
manded you, that of the goods and chattels, &c. (re-
citing the *feri facias* :) And you at that day returned
to us at *Westminster* aforesaid, that by virtue of the
said writ to you directed, you had taken goods and
chattels of the said *C. D.* to the value of — *l.* parcel
of the damages (or debt and damages) aforesaid;
which said goods and chattels remained in your
hands unsold, for want of buyers, and therefore that
you could not have that money before us at *West-*
minster, at the day aforesaid; and that the said *C. D.*
had no other or more goods or chattels in your baili-
wick, whereof you could cause to be made the resi-
due of the damages (or debt and damages) aforesaid,
or any part thereof, as by the said writ you were
commanded: Therefore we command you, that you
expose to sale the goods and chattels of the said
C. D. by you in form aforesaid taken; and have the
said — *l.* parcel, &c. before us at *Westminster*, on
— next after —, to render to the said *A. B.* for
so much of the damages (or debt and damages) afore-
said: We also command you, that of the goods and
chattels of the said *C. D.* in your bailiwick, you
cause to be made — *l.* residue of the damages (or
debt and damages) aforesaid; and have that money,
together with the said — *l.* parcel, &c. before us,
at the day and place aforesaid, to render to the said
A. B. for his damages (or debt and damages) afore-
said; and have there then this writ. Witness, &c.

(§ 66.)

Entry of *vendi-*
tionis exponas
and return,
and award of
feri facias for
the residue.

The sheriff was commanded, that of the goods and
chattels of *C. D.* in his bailiwick, he should cause to
be made — *l.* and that he should have that money
before the lord the king at *Westminster*, on —
next after —, to render to *A. B.* for his damages,
(or debt and damages,) &c. (as in *feri facias* :) At
which day, before the said lord the king at *West-*
minster, comes the said *A. B.* in his proper person;
and the sheriff returns, that by virtue of the writ of
the said lord the king to him thereupon directed, he
hath taken goods and chattels of the said *C. D.* to
the value of — *l.* which remain in the hands of the
said sheriff unsold, for want of buyers; wherefore he
cannot have the said money before the said lord the

king at *Westminster*, on the day aforesaid; and that the said *C. D.* hath no other goods or chattels in the bailiwick of the said sheriff, whereof he can cause to be made any more of the money in the said writ contained: Therefore the sheriff is commanded, that he expose to sale the goods and chattels aforesaid, by him in form aforesaid taken; and that he have the money arising from such sale, before the said lord the king at *Westminster*, on — next after —, to render to the said *A. B. &c.* The said sheriff is also commanded, that of the goods and chattels of the said *C. D.* in his bailiwick, he cause to be made — *l.* residue of the damages (or debt and damages) aforesaid; and that he have that money before the said lord the king at *Westminster*, on the day aforesaid, to render to the said *A. B.* for his damages aforesaid; the same day is given to the said *A. B.* there, &c.

George the Third, &c. To the sheriff of — greeting: We command you, that you distrain *E. F.* late sheriff of your county, by all his lands and chattels in your bailiwick, so that neither he, nor any one by him, do lay hands on the same, until you have another command from us in that behalf, and that you answer to us for the issues of the same; so that he expose to sale those goods and chattels which were of *C. D.* in your bailiwick, to the value of — *l.* which lately in our court before us were adjudged to *A. B.* for his damages which he had sustained, as well on occasion of the not performing certain promises and undertakings then lately made by the said *C. D.* to the said *A. B.* as for his costs and charges by him about his suit in that behalf expended, whereof the said *C. D.* is convicted, as appears to us of record; and which goods and chattels he lately took by virtue of our writ, and which remain in his hands unsold for want of buyers, as the said late sheriff returned to us at *Westminster*, at the return-day of the writ aforesaid; and have that money before us at *Westminster*, on — next after —, to render to the said *A. B.* for his damages aforesaid; and have there then this writ. Witness, &c.

(§ 67.)

Distringas me per vicecomitem,
to expose to
sale goods taken
on a *fiert facias* in *assumpsit*.

(§ 68.)
The like for
part, in debt,
and *feri facias*
for the residue.

George the Third, &c. To the sheriff of —
greeting: We command you that you distrain *E. F.*
&c. (as in last writ, to the words "issues of the
same," and then as follows:) so that he expose to
sale those goods and chattels which were of *C. D.*
in your bailiwick, to the value of —*l.* parcel of
a certain debt of —*l.* which *A. B.* lately in our
court before us at *Westminster*, recovered against
him, and also —*l.* which in our said court were
adjudged to the said *A. B.* for his damages which
he had sustained, as well on occasion of the deten-
tion of the said debt, as for his costs and charges by
him about his suit in that behalf expended, whereof
the said *C. D.* is convicted, as appears to us of re-
cord; and which goods and chattels he lately took
by virtue of our writ, and which remain in his hands
unsold for want of buyers, as the said late sheriff
returned to us at *Westminster*, on — last past;
and have that money before us at *Westminster*, on
— next after —, to render to the said *A. B.* for
so much of his debt and damages aforesaid: We also
command you, that of the goods and chattels of the
said *C. D.* in your bailiwick, you cause to be made
—*l.* residue of the debt and damages aforesaid;
and have that money before us at *Westminster*, on
the day last aforesaid, to render to the said *A. B.* for
the residue of his debt and damages aforesaid; and
have there then this writ. Witness, &c.

(§ 69.)
Elegit,

George the Third, &c. To the sheriff of —
greeting: Whereas *A. B.* lately in our court before
us at *Westminster*, by bill without our writ, (or by
original, by our writ,) and by the judgment of the
same court, recovered against *C. D.* —*l.* which in
our said court before us were adjudged to the said
A. B. for his damages which he had sustained, as
well on occasion of the not performing certain pro-
mises and undertakings then lately made by the said
C. D. to the said *A. B.* (or if in debt, "recovered
against the said *C. D.* a certain debt of —*l.* and

also — which in our same court were adjudged to the said *A. B.* for his damages which he had sustained, as well on occasion of the detention of the said debt,") as for his costs and charges by him about his suit in that behalf expended ; whereof the said *C. D.* is convicted, as appears to us of record : And afterwards, the said *A. B.* came into our court before us, and according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* except the oxen and beasts of his plough, and also a moiety of all the lands and tenements of the said *C. D.* in your bailiwick ; to hold to him the said goods and chattels, as his proper goods and chattels, and to hold a moiety of the lands and tenements aforesaid to him and his assigns, as his freehold, according to the form of the said statute, until the damages (or debt and damages) aforesaid should be thereof fully levied : Therefore we command you, that without delay you cause to be delivered to the said *A. B.* by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except the oxen and beasts of his plough, and also a moiety of all the lands and tenements in your bailiwick, whereof the said *C. D.* or any person or persons in trust for him, on the — day of — in the — year of our reign, (the day of signing judgment,) on which day the judgment aforesaid was given, or ever afterwards, was seized ; to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said moiety of the lands and tenements aforesaid to him and his assigns, as his freehold, according to the form of the statute aforesaid, until the damages (or debt and damages) aforesaid shall be thereof fully levied ; and in what manner you shall have executed this our writ, make appear to us at *Westminster* on — next after —, under your seal, and the seals of those by whose oath you shall make the said extent and appraisement ; and have there then this writ. Witness, &c.

For an elegit against an heir and tertenants, vide post, p. 431.

(70)

(§ 71.)
Inquisition on
etc. it.

— to wit. An inquisition indented, taken at — in the county of —, the — day of — in the — year of the reign of our sovereign lord *George the Third*, by the grace of God of the united kingdom of *Great Britain and Ireland*, king; defender of the faith, and in the year of our lord 18—, before me — sheriff of the county aforesaid, by virtue of his majesty's writ to me directed, and to this inquisition annexed, by the oath of *E. F. &c.* twelve honest and lawful men of the county aforesaid, who being sworn and charged, say upon their oath, that *C. D.* named in the said writ to this inquisition annexed, on the day of taking this inquisition, was possessed of the goods and chattels following, to wit, — of the price of —, &c. (here set out the goods, and the price or value of them,) as of his own proper goods and chattels; which said goods and chattels I the said sheriff have caused to be delivered to the said *A. B.* to hold to him the said goods and chattels, as his own proper goods and chattels, in part satisfaction of his damages (or debt and damages) in the said writ mentioned: And the jurors aforesaid upon their oath further say, that the said *C. D.* on the — day of — in the — year of his said majesty's reign, being the day on which the judgment in the said writ specified was given, was seised in his demesne as of fee of and in one messuage, and one close of pasture thereto adjoining, with the appurtenances, containing by estimation — acres more or less, situate lying and being in the parish of — in the county aforesaid, and now or late in the tenure or occupation of —, and being of the clear yearly value of —*l.* in all issues, beyond reprises; and also of and in one other close, &c. and (if the premises are in mortgage, say) which said premises are subject to a mortgage made thereof by the said *C. D.* to one *E. F.* of —, by indenture bearing date, &c. for the term of — years at the yearly rent of one pepper-corn, subject to redemption, on payment of —*l.* and interest at 5*l.* per cent. per annum, at a day since past: And the jurors aforesaid upon their oath aforesaid further say, that the said messuage, &c. (describing a moiety of the premises,) subject as aforesaid, are a true and

equal moiety of all and singular the lands and tenements of the said *C. D.* in the said writ named, or any person or persons in trust for him, in my county; which said moiety I the said sheriff, on the aforesaid day of taking this inquisition, have caused to be delivered to the said *A. B.* in the said writ named, subject as aforesaid, by a reasonable price and extent; to hold to him and his assigns, as his free tenement, according to the form of the statute in such case made and provided, until he shall have thereof fully levied the said damages (or debt and damages) in the said writ specified, as by the said writ it is commanded: And, lastly, the jurors aforesaid upon their oath aforesaid say, that the said *C. D.* in the said writ named, on the aforesaid day of taking this inquisition, had not any other or more goods or chattels in my bailiwick; nor had he, or any person or persons in trust for him, on the day the judgment aforesaid was given, or at any time afterwards, any other or more lands or tenements in the county aforesaid, to the knowledge of the said jurors. In witness whereof, as well I the said sheriff, as the jurors aforesaid, have set our seals to this inquisition, on the day and year, and at the place aforesaid.

Afterwards, that is to say, on — next after — then next following, before the said lord the king at *Westminster*, comes the said *A. B.* by his attorney aforesaid, and according to the form of the statute in such case made and provided, chooses to be delivered to him all the goods and chattels of the said *C. D.* except the oxen and beasts of his plough, and also a moiety of all the lands and tenements of the said *C. D.* to hold to him the goods and chattels aforesaid, as his proper goods and chattels, and to hold a moiety of the lands and tenements aforesaid, to him and his assigns, as his freehold, according to the form of the statute aforesaid, until the damages (or debt and damages) aforesaid shall be thereof fully levied; and he prays the writ of the said lord the king thereupon, to be directed to the sheriff of —, and it is granted to him, &c. returnable before the said lord the king at *Westminster*, on — next

(§ 72.)

Award of *elegit*
on the roll,

after —; the same day is given to the said *A. B.* there, &c. At which day, before the said lord the king at *Westminster*, comes the said *A. B.* by his attorney aforesaid; and the sheriff, to wit, — esquire, sheriff of the county aforesaid, now here returns the writ aforesaid to him in form aforesaid directed, in all things served and executed, together with a certain inquisition to the said writ annexed, taken before the said sheriff in the premises, by virtue of the said writ; which said inquisition follows in these words, that is to say: — to wit. An inquisition, &c. (here copy the inquisition.)

(§ 73.)
Re-elegit,

George the Third, &c. To the sheriff of —, greeting: Whereas *A. B.* lately in our court before us at *Westminster*, &c. (reciting the first writ.) And you on that day returned to us at *Westminster*, a certain inquisition indented, taken before you at — on the — day of — last past, by the oath, &c. whereby it is found, &c. (reciting the return:) And because we are now given to understand in our said court before us, that the said *C. D.* at the time of giving the judgment aforesaid and afterwards had, and still hath divers other lands and tenements in your county, besides those which are mentioned in the return above set forth, one moiety of which said other lands and tenements the said *A. B.* ought also to have in execution, for the more speedy recovery of his damages (or debt and damages) aforesaid; wherefore the said *A. B.* hath humbly besought us, that he may so have them, according to due course of law: Therefore we command you, that you cause to be delivered to the said *A. B.* in the presence of the said *C. D.* to be warned on that occasion if he will attend, a moiety of all the other lands and tenements of the said *C. D.* in your bailiwick, as well as of those whereof a moiety is before extended in execution, for the payment of the damages (or debt and damages) aforesaid; to hold to the said *A. B.* and his assigns, as his freehold, according to the form of the statute aforesaid, until the damages (or debt and damages) aforesaid shall be thereof fully levied; And in what manner you shall have executed this our writ, &c. (as before, p. 427.)

George the Third, &c. To the sheriff of ——— (§ 74.)
greeting: Whereas *A. B.* lately in our court before us at *Westminster*, by bill without our writ, (or by original, by our writ,) and by the judgment of the same court, recovered, &c. (as in a common *elegit*, to the words, “as appears to us of record,”) and whereupon by our writ we lately commanded you, that of the goods and chattels, &c. (reciting the *feri facias* :) And you at that day returned, &c. (reciting the return :) And afterwards the said *A. B.* came into our court before us, and chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except the oxen and beasts of his plough, and also a moiety of all the lands and tenements of the said *C. D.* in your bailiwick, by a reasonable price and extent; to hold to him and his assigns, according to the form of the statute in such case made and provided, until ——— *l.* residue of the damages (or debt and damages) aforesaid, should be thereof fully levied: Therefore we command you, &c. (as in a common *elegit*, to the words “according to the form of the statute aforesaid,”) until the said ——— *l.* residue of the damages (or debt and damages) aforesaid, shall be thereof fully levied; and in what manner you shall have executed this our writ, &c. (as before, p. 427.)

Elegit for the residue, after a *feri facias*.

George the Third, &c. To the sheriff of ———
greeting: Whereas *A. B.* gentleman deceased, lately in our court before us at *Westminster*, by bill without our writ, and by the consideration and judgment of the same court, recovered against *C. D.* and *E. F.* as well a certain debt of ——— *l.* as also ——— *s.* which in our same court were adjudged to the said *A. B.* for his damages which he had sustained, as well by reason of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* and *E. F.* were convicted, as appears to us of record: And whereas for the levying of the debt and damages aforesaid, we lately commanded our late sheriff of ———, that he should not omit by reason of any liberty in his county, but enter the same, and of the goods and chattels of the said *C. D.* and *E. F.* in his bailiwick, he should cause to be levied the debt and damages

The like, for an administrator cum testamento annexo, against an heir and tertenants, on a judgment in debt against several defendants, revived by *scire facias*.

aforesaid; and that he should have the said monies before us at *Westminster*, on — next after —, to render to the said *A. B.* for his debt and damages aforesaid: And our said late sheriff at that day returned to us at *Westminster* aforesaid, that of the goods and chattels of the said *C. D.* and *E. F.* in his bailiwick, he had caused to be levied the sum of — *l.* parcel of the debt and damages aforesaid; and that they had no other goods and chattels in his bailiwick, whereof he could cause to be made the residue of the debt and damages aforesaid, or any part thereof: And although judgment be thereupon given, yet execution for — *l.* being the residue of the debt and damages aforesaid, still remains to be made; and as well the said *A. B.* as the said *C. D.* and *E. F.* after the rendering of the judgment aforesaid, respectively died, as by the information of *G. H.* gentleman, administrator of all and singular the goods, chattels and credits which were of the said *A. B.* at the time of his death, with the will of the said *A. B.* annexed, we were given to understand; wherefore the said *G. H.* administrator as aforesaid, humbly besought us to provide him a proper remedy in this behalf: And we being willing that what is just in this behalf should be done, by our writ lately commanded our late sheriff of —, that by honest and lawful men of his bailiwick, he should make known to the heir and tenants of all and singular the lands and tenements in his bailiwick, whereof the said *C. D.* on the — day of — in the — year of our reign, on which day the aforesaid judgment was given, or ever afterwards, was seised in fee-simple, that they should be before us at *Westminster*, on — next after —, to shew if they had or could say any thing for themselves, why the said — *l.* residue, &c. ought not to be made of those lands and tenements, and rendered to the said *G. H.* as administrator as aforesaid, for the residue of the debt and damages aforesaid, according to the form and effect of the said recovery, if it should seem expedient for him so to do; and also that by honest and lawful men of his bailiwick, in like manner he should make known to the heir and tenants of all and singular the lands and tenements in his bailiwick, whereof the said *E. F.* on the said — day of —

in the — year aforesaid, on which day the aforesaid judgment was given, or ever afterwards, was seised in fee-simple, that they should be before us at *Westminster*, on the said — next after —, to shew if they had or could say any thing for themselves, why the said — l. residue, &c. ought not to be made of those last-mentioned lands and tenements, and rendered to the said *G. H.* as administrator as aforesaid, for the residue of the debt and damages aforesaid, according to the form and effect of the said recovery, if it should seem expedient for him so to do; and further to do and receive what our said court before us should then and there consider of the said several and respective heirs and tenants in this behalf; and that the said late sheriff should have then there the names of those by whom he should so make it known to them, and that writ: And our said late sheriff at that day certified and returned to us at *Westminster* aforesaid, that by virtue of the said writ to him directed, he had by — and — good and lawful men of his bailiwick, given notice to *J. K.* son and heir of the said *C. D.* in the said writ named, and tenant of the several messuages, cottages, lands and tenements hereinafter particularly mentioned, to wit, two messuages, &c. with the appurtenances, in the parish of — in his bailiwick, in the possession and occupation of —, which were the messuages, cottages, lands and tenements of the said *C. D.* in his life-time, on the day of giving the judgment in the said writ mentioned, of which the said *C. D.* then and afterwards was seised in fee-simple, to be and appear before us at *Westminster*, at the day and place in the said writ specified, to shew in manner therein also mentioned: And our said late sheriff further certified, that there were no other tenants, nor was there any other tenant, of any other lands or tenements in his said bailiwick, whereof the said *C. D.* on the day of giving the said judgment, or ever afterwards, was seised in fee-simple, to whom he could make known, as by the said writ he was commanded: And our said late sheriff further certified, that there was no heir, nor were there any tenants, nor was there any tenant, of any lands or tenements in his said bailiwick, whereof the said *E. F.* in the said writ named,

on the day of giving the said judgment, or ever afterwards, was seised in fee-simple, to whom he could make known, as by the said writ he was also commanded: And such proceedings were thereupon had, in our said court before us at *Westminster*, that it was afterwards considered in our same court, that the said *G. H.* should have his execution against the said *J. K.* of the said — *l.* residue of the debt and damages aforesaid, to be levied of the lands and tenements, whereof the said *C. D.* was returned tenant as aforesaid, according to the force and effect of the said recovery, by the default of the said *J. K.* &c. And afterwards the said *G. H.* came into our said court before us at *Westminster* aforesaid, and according to the form of the statute in such case made and provided, chose to be delivered to him, one moiety of the lands and tenements last aforesaid; to hold to him and his assigns, as his freehold, according to the form of the statute aforesaid, until the said — *l.* residue of the debt and damages aforesaid should be thereof fully levied: Therefore we command you, that without delay you cause to be delivered to the said *G. H.* by a reasonable price and extent, one moiety of the lands and tenements aforesaid, with the appurtenances; to hold to him and his assigns, as his freehold, according to the form of the statute aforesaid, until the said — *l.* residue of the debt and damages aforesaid shall be thereof fully levied: And in what manner you shall have executed this our writ, make appear to us at *Westminster*, on — next after — under your seal, and the seals of those by whose oath you shall make the said extent and appraisement; and have there then this writ. Witness, &c.

(§ 75.)
Immediate extent, for the king's debt, on a judgment of the Exchequer.

George the Third, &c. To the sheriff of — greeting: Whereas by judgment of the barons of our Exchequer at *Westminster*, given on — we have lately recovered against *C. D.* the sum of — *l.* of lawful money of *Great Britain*, as by the records of our Exchequer appears: Now we being

willing to be satisfied the said — l. so due to us, with all the speed we can, as is just, do command you, that you omit not by reason of any liberty, but enter the same, and take the said *C. D.* by his body, wherever he shall be found in your bailiwick, and keep him safely and securely in prison, till we shall be fully satisfied the said debt; and that as well on the oath of honest and lawful men of your bailiwick, and by the testimony on oath of any other honest and lawful men, by whom the truth may be the better known, as by all other lawful means, you diligently inquire what lands and tenements, and of what yearly values, the said *C. D.* had in your bailiwick, on the — day of — in the — year of our reign, when the said *C. D.* first became indebted to us in the said money, or at any time after, until now; and what goods and chattels, and of what sorts and prices, and what debts, credits, specialties and sums of money, the said *C. D.* or any person or persons to his use, or in trust for him, now hath in your said bailiwick: And that by the oath of the aforesaid honest and lawful men, you cause all and singular the said goods and chattels, lands and tenements, debts, credits, specialties and sums of money, in whose hands soever they now are, to be carefully appraised and extended, and to be taken and seised into our hands, that we may retain them, until we shall be fully satisfied our said debt, according to the form of the statute made and provided for the recovery of such our said debts: And we further command you, and give and grant you power by these presents, to summon before you whomsoever it may be proper to examine in the premises, and to examine them carefully touching the same, that this our present command may not remain to be further executed: And in what manner you shall have executed this our command, you make distinctly and plainly appear to the barons of our Exchequer at *Westminster*, on the — day of — next; and that you have there then this writ: Provided that you do not sell or cause to be sold those goods and chattels, which you shall seise into our hands by virtue hereof, until you shall have another command from us. Witness Sir *Archibald Macdonald* knight,

the — day of — in the — year of our reign;
By the remembrance-rolls; and by the said statute;
and by the barons.

(§ 76.) *George the Third, &c.* To the sheriff of —
The like, for a greeting: Whereas *C. D.* of — and *E. F.* of —
bond-debt. by their writing obligatory, sealed with their seals,
bearing date, &c. are jointly and severally bound to
us, in the sum of — l. of good and lawful money
of *Great Britain*, payable at a certain day now past,
and which sum they have not, nor hath either of
them, as yet paid or caused to be paid to us, as it is
said: And we being desirous to be satisfied the said
sum of — l. now due to us, with all the speed we
can, as is just, command you, that you omit not en-
tering by any liberty, and as well by the oath of
honest and lawful men of your bailiwick, and by the
testimony on oath of any other honest and lawful
men of your said bailiwick, by whom the truth of
the matter may be the better known, as by all other
ways, means and methods, by which you can or may
the better be informed or enabled, you diligently in-
quire what debts, credits, specialties and sums of
money the said *C. D.* now hath in your said baili-
wick; and that by the oath of the aforesaid honest
and lawful men, you cause all and singular the afore-
said debts, credits, specialties and sums of money, in
whose hands soever they now are, to be carefully
appraised and extended, &c. (as in the last, to the
words "have there then this writ"). Witness Sir
Archibald Macdonald, &c. By the writing obliga-
tory aforesaid; by the aforesaid act of parliament,
made in the 33d year of the reign of the late king
Henry the Eighth; by warrant; and by the barons.

(§ 77.) The execution of this writ appears in the inquisi-
Return there- tion hereunto annexed.
to.

The answer of — sheriff.

(§ 78.) — to wit. An inquisition indented, taken at
Inquisition. —, the — day of — in the — year of the
reign of our sovereign lord *George the Third*, by

the grace of God, of the united kingdom of *Great Britain* and *Ireland* king, defender of the faith, before me ——— sheriff of the county aforesaid, by virtue of the king's writ to me directed, which is hereunto annexed, on the oath of *G. H.* &c. honest and lawful men of my bailiwick, who being sworn and charged, on their oath say that *J. K.* of ——— made a note in writing, bearing date, &c. with his own proper hand thereunto subscribed, and thereby ——— after date of the said note, promised to pay *L. M.* or his order, the sum of ———*l.* value received; which said note was indorsed by the said *L. M.* to *C. D.* in the writ hereunto annexed named; whereby, and by force of the statute in such case made and provided, they became severally liable to pay to the said *C. D.* the said sum of money in the said note mentioned, according to the tenor and effect of the said note, and of the said indorsement so made thereon as aforesaid; which said debt of ———*l.* so due as aforesaid, I the said sheriff, on the day of taking this inquisition, have seised and taken into his majesty's hands, according to the command of the said writ: And the jurors aforesaid on their said oath further say, that the said *C. D.* on the day of taking this inquisition, hath not any other or more debts, credits, specialties or sums of money, in my said bailiwick, to the knowledge of the said jurors, which can be seised or taken into his said majesty's hands, by virtue of the said writ. In witness whereof, as well I the said sheriff, as the jurors aforesaid, to this inquisition, have set our seals, the day year and place first above-mentioned.

George the Third, &c. To the sheriff of ——— (§ 79.)
greeting: Whereas *C. D.* of ——— and *E. F.* of ——— Extent in aid.
by their writing obligatory, sealed with their seals, bearing date, &c. are jointly and severally bound to us, in the sum of ———*l.* of good and lawful money of *Great Britain*, payable at a certain day now past, and which sum they have not nor hath either of them as yet paid or caused to be paid to us, as it is said: And whereas by an inquisition indented, taken at ———, the ——— day of ——— in the ——— year of our reign, before ——— sheriff of our said county of ——— by virtue of our writ of extent under the seal of our

Exchequer at *Westminster*, against the said *C. D.* to the said sheriff of — directed, it is found on the oath of *G. H.* and others, good and lawful men of the said sheriff's bailiwick, that *J. K.* of — made a note in writing bearing date, &c. with his own proper hand thereunto subscribed, and thereby — after date of the said note, promised to pay *L. M.* or his order, the sum of —*l.* value received; which said note was indorsed by the said *L. M.* to the said *C. D.* in the said writ named; whereby, and by force of the statute in such case made and provided, they became severally liable to pay to the said *C. D.* the said sum of money in the said note mentioned, according to the tenor and effect of the said note, and of the said indorsement so made thereon as aforesaid; which said debt of —*l.* so due as aforesaid, the said sheriff, on the day of taking the said inquisition, hath seised and taken into his majesty's hands, according to the command of the said writ; as by the said writ and return thereof, and the said inquisition thereto annexed, certified into our said Exchequer, and there remaining in custody of our remembrancer, may more fully appear: And we being desirous to be satisfied the said sum of —*l.* now due to us, with all the speed we can, as is just, command you that you omit not entering any liberty, but that you take the bodies of the said *J. K.* and *L. M.* and keep them safely in our prison, until they have fully satisfied us the said debt; and that as well by the oath of good and lawful men of your bailiwick, and by the testimony on oath of any other honest and lawful men of your said bailiwick, by whom the truth may be the better known, as by all other ways means and methods by which you can or may be the better informed and enabled, you diligently inquire what lands and tenements, and of what yearly values, the said *J. K.* and *L. M.* had in your bailiwick, and also what goods and chattels, and of what sorts and prices, and what debts, credits, specialties and sums of money the said *J. K.* and *L. M.* now have, or any other person or persons in trust for them or either of them hath or have in your bailiwick; and that by the oath of the aforesaid honest and lawful men, you cause all and singular the said

goods and chattels, lands and tenements, debts, credits, specialties and sums of money, in whose hands soever they now are, to be carefully appraised and extended, &c. (as before, p. 434, 5. to the *teste*, and conclude as follows :) By the writ and inquisition aforesaid; by warrant of the lord chief-baron; by the aforesaid act of parliament, &c. and by the barons.

George the Third, &c. To the sheriff of ——— (§ 80.)
greeting: Whereas by an inquisition taken before you, the ——— day of ——— last, by virtue of our writ of extent, issued out of and under the seal of our Exchequer, against *C. D.* to you directed, it was found that *J. K.* of ——— made a note in writing, bearing date, &c. (as in the inquisition;) which said debt of ———*l.* so due as aforesaid, you have seised and taken into our hands, according to the command of the said writ; as by the said writ of extent and inquisition thereon taken, returned and filed in our said Exchequer, and there remaining in the custody of our remembrancer, more fully and at large appears: And whereas by our writ of extent, tested the ——— day of ——— last, issued out of and under the seal of our Exchequer, to you directed, against the said *J. K.* we have, amongst other things, commanded you, that you should not omit by reason of any liberty, but that you should enter the same, and take the body of the said *J. K.* and him safely and securely keep in our prison, until he should fully satisfy us the said debt of ———*l.* and that you should likewise extend take and seise into our hands, all the lands, tenements, goods and chattels, debts, credits, specialties, sum and sums of money of him the said *J. K.* which you should find in your bailiwick, there to remain, until we should be fully satisfied our said debt: Nevertheless, for certain reasons the barons of our said Exchequer thereunto especially moving, we command you, that if the said *J. K.* now remains in your custody on that and no other account, that you do forthwith release him, and let him go at large; and if you have by virtue of the said writ, taken and seised into our hands any goods or chattels, lands or tenements,

*Supersedens
thereon.*

debts, credits, specialties, sum or sums of money whatsoever, of him the said *J. K.* you do forthwith re-deliver or cause the same to be re-delivered to the said *J. K.* or his assigns, by virtue of these presents; any thing in the said former writ to the contrary notwithstanding. Witness Sir *Archibald Macdonald* knight, the — day of — in the — year of our reign. By the barons.

(§ 81.)
Capias si laicus,
 on a statute-
 merchant,

George the Third, &c. to the sheriff of —, greeting: We command you, that you take the body of *C. D.* of — if he be a layman, and shall be found in your bailiwick, and him safely keep in our prison, until he shall fully satisfy *A. B.* of —*l.* which the said *C. D.* on the — day of — in the — year of our reign, before — esquire, then mayor of the city of —, and — gentleman, town-clerk of the same city, then being the clerk deputed and assigned to take recognizances of debts in the city aforesaid, according to the form of the statute-merchant, acknowledged himself to owe to the said *A. B.* and which he ought to have paid to him on the feast of — then next following, but which he hath not yet paid to him, as it is said; and in what manner you shall have executed this our writ, make known to us at *Westminster*, on — next after —; and have there then this writ. Witness, &c.

(§ 82.)
 Extent there-
 on.

George the Third, &c. To the sheriff of —, greeting: Whereas by our writ we commanded you, that you should take the body of *C. D.* of — if he was a layman, and should be found in your bailiwick, and him safely keep in our prison, until he should fully satisfy *A. B.* of —*l.* which the said *C. D.* on the — day of — in the — year of our reign, before — esquire, then mayor of the city of —, and — gentleman, town-clerk of the same city, then being the clerk deputed and assigned to take recognizances of debts in the city aforesaid,

according to the form of the statute-merchant, acknowledged himself to owe to the said *A. B.* and which he ought to have paid to him on the feast of — then next following, but which he had not then paid to him, as it was said; and in what manner you should have executed that our writ, you should make known to us at *Westminster*, on — next after — : And you at that day returned to us at *Westminster*, that the said *C. D.* is a layman, and not found in your bailiwick: Therefore we command you, that without delay you cause to be delivered to the said *A. B.* by a reasonable price and extent, all the goods and chattels of the said *C. D.* and all the lands and tenements in your bailiwick, of which the said *C. D.* on the aforesaid day of acknowledging the debt aforesaid, or ever afterwards, was seized, to whose hands soever they have come, unless they have descended to any one, being within age, by hereditary descent; to hold the goods and chattels aforesaid to the said *A. B.* as his proper goods and chattels, and the lands and tenements aforesaid, as his freehold, to him and his assigns, according to the form of the statute in such case made and provided, until he shall have levied thereof the debt aforesaid, together with his damages, and all necessary and reasonable costs in labours, suits, delays and expences; and nevertheless, that you take the body of the said *C. D.* if he shall be found in your bailiwick, and him safely keep in our prison, until he shall fully satisfy the said *A. B.* of the debt aforesaid; and in what manner, &c. (as before, p. 440.)

George the Third, &c. To the sheriff of — (§ 83.)
greeting: We command you, that of the moveable *Levati, against*
goods and chattels of *C. D.* parson of the church of a clerk.
— in your bailiwick, without delay you cause to be levied — *l.* which the said *C. D.* on — before, &c. acknowledged, &c. (as in the *capias si laicus*, to the words “as it is said”); and that you cause the said *A. B.* to have the same; and in what manner, &c. (as before, p. 440.)

George the Third, &c. To the sheriff of —, (§ 84.)
Extent, on a
statute-staple.

greeting : Because *C. D.* of — on the — day of — in the — year of our reign, before — of — mayor of our staple of —, deputed to take recognizances of debt in the same staple, acknowledged himself to owe to *A. B.* of —, —*l.* &c. which he ought to have paid to him on the feast of — then next following, but which he hath not yet paid to him, as it is said : We command you, that you take the body of the said *C. D.* if he be a layman, and shall be found in your bailiwick, and safely keep him in our prison, until he shall fully satisfy the said *A. B.* of the debt aforesaid ; and that by the oath of honest and lawful men of your bailiwick, by whom the truth of the matter may be the better known, you diligently cause to be extended and appraised, and to be taken into our hands, all the lands and tenements and chattels of the said *C. D.* in your bailiwick, according to the true value of the same, and cause them to be delivered to the said *A. B.* until he shall be fully satisfied of the debt aforesaid, according to the form of the ordinance thereof made ; and in what manner you shall have executed this our command, make known to us in our Chancery, on — next coming, wheresoever, &c. by your letters sealed ; and have there this writ. Witness, &c.

(§ 85.)
Liberate there-
on.

George the Third, &c. To the sheriff of —, greeting : Whereas *C. D.* of — on, &c. (re-citing the last writ, to the words “ by your letters sealed,” and then as follows :) And you have returned to us, that the said *C. D.* was not found in your bailiwick, after our writ was delivered to you, but that you have taken into our hands all the lands and tenements and chattels of the said *C. D.* in your said bailiwick, and caused them to be extended and appraised, according to the tenor of our writ aforesaid, to wit, — messuages, which are appraised at —*l.* &c. : Therefore we command you, that you deliver to the said *A. B.* all the lands and tenements and chattels aforesaid, by you so taken into our hands, if he will have them, by the extent and appraisement aforesaid ; to hold according to the form of the ordinance aforesaid ; until he shall be

satisfied of his debt aforesaid; and in what manner,
&c. (as in the last writ.)

George the Third, &c. To the sheriff of ———
greeting : Whereas *A. B.* lately in our court before
us at *Westminster*, by bill without our writ (or by
original, by our writ,) and by the judgment of the
same court, recovered against *C. D.* son and heir
of *E. F.* deceased, a certain debt of ———*l.* and also
———*l.* which in our said court before us were ad-
judged to the said *A. B.* for his damages, &c. to be
levied of the lands and tenements which were of the
said *E. F.* in fee simple at the time of his death, in
the hands of the said *C. D.* whereof the said *C. D.*
is convicted, as appears to us of record : Therefore
we command you, that by the oath of honest and
lawful men of your bailiwick, you diligently inquire
of what lands and tenements the said *E. F.* was
seised in fee simple at the time of his death, and
which descended to the said *C. D.* as son and heir
of the said *E. F.* by hereditary right, after the death
of the said *E. F.* and of which the said *C. D.* on
the ——— day of ——— in the ——— year of our reign,
on which day the said *A. B.* exhibited his bill (or
sued out his original writ) for the debt aforesaid,
against the said *C. D.* was seised in his demesne as
of fee, and how much those lands and tenements
with the appurtenances are worth by the year, in all
issues beyond reprises, according to the true value
of the same; and when the said inquisition shall
have been by you so made, that without delay you
deliver the said lands and tenements with the ap-
purtenances to the said *A. B.* to hold to him and
his assigns, as his freehold, until the damages (or
debt and damages) aforesaid shall be thereof fully
levied; and in what manner you shall have executed
this our writ, make appear to us at *Westminster*,
on ——— next after ——— under your seal, and the
seals of them by whose oath you shall make the said
extent and appraisement; and have there then the

(§ 86.)
Extent against
an heir, upon
a special judg-
ment.

names of them by whose oath you shall make the said extent and appraisement, and this writ. Witness, &c.

(§ 87.)
The like, on a
general judgment.

George the Third, &c. To the sheriff of —, greeting: Whereas *A. B.* lately in our court before us at *Westminster*, by bill without our writ (or by original, by our writ), and by the judgment of the same court, recovered against *C. D.* son and heir of *E. F.* deceased, a certain debt of —*l.* and also —*l.* which in our said court before us were adjudged to the said *A. B.* for his damages, &c. whereof the said *C. D.* is convicted, as appears to us of record: And afterwards the said *A. B.* came into our said court before us, and prayed to be delivered to him all the lands and tenements of the said *C. D.* in your county, which descended to the said *C. D.* from the said *E. F.* his father in fee-simple, whereof the said *C. D.* on the — day of — in the — year of our reign, on which day the said *A. B.* exhibited his bill (or sued out his original writ) for the debt aforesaid against him, was seised: But because it is unknown, what lands and tenements the said *C. D.* on the aforesaid day of exhibiting the bill (or suing out the original writ) aforesaid, had by hereditary descent from the said *E. F.* his father; we command you, that by the oath of honest and lawful men of your bailiwick, you diligently inquire what lands and tenements the said *C. D.* on the same day of exhibiting the bill (or suing out the original writ) aforesaid, had by hereditary descent from the said *E. F.* his father, and how much those lands and tenements are worth by the year, according to the true value of the same, in all issues beyond reprises: and when the said inquisition shall have been by you diligently made, that without delay you deliver to the said *A. B.* the said lands and tenements with the appurtenances according to the true value of the same; to hold to the said *A. B.* and his assigns, as his freehold, until the damages (or debt and damages) aforesaid shall be thereof fully levied; and in what manner you shall have executed this our writ, make appear, &c. (as before, p. 443.)

George the Third, &c. To the sheriff of —, greeting: We command you, that you take *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster*, on — next after — to satisfy *A. B.* of — *l.* which the said *A. B.* lately in our court before us at *Westminster*, recovered against him, for his damages which he had sustained, as well on occasion of the not performing certain promises and undertakings then lately made by the said *C. D.* to the said *A. B.* as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* is convicted, as appears to us of record; and have there then this writ. Witness, &c.

(§ 88.)

Capias ad satisfaciendum, in assumpsit.

Way.

George the Third, &c. To the sheriff of —, greeting: We command you that you take *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster*, on — next after — to satisfy *A. B.* of a certain debt of — *l.* which the said *A. B.* lately in our court before us at *Westminster*, recovered against him, and also — *l.* which in our said court before us, were adjudged to the said *A. B.* for his damages which he had sustained, as well on occasion of the detention of that debt, as for his costs and charges by him about his suit in that behalf expended; whereof the said *C. D.* is convicted, as appears to us of record; and have there then this writ. Witness, &c.

(§ 89.)

The like, in debt.

In *assumpsit* or debt by or against surviving partners, or by or against executors or administrators, and in covenant, case, and trespass, the form of the writ varies, in like manner as the *feri facias*, for which *vide ante*, p. 395, &c.

George the Third, &c. To our chancellor of our county-palatine of *Lancaster*, or to his deputy there greeting: We command you, that by our writ under the seal of our said county-palatine to be duly made, and directed to the sheriff of our said county-palatine, you command the said sheriff, that he take *C. D.*

(§ 90.)

The like, to a county-palatine.

if he shall be found in his bailiwick, and him safely keep, so that he may have his body before us at *Westminster*, on — next after — to satisfy *A. B.* of — *l.* (or of a certain debt of — *l.*) &c. (as in a common *capias ad satisfaciendum*, to the end.)

(§ 91.)
Entry and
award of *capias*
ad satisfaciendum, and *testa-*
tum.

Afterwards, to wit, on the — day of — in this same term, the said *A. B.* comes here into court by his attorney aforesaid, and prays the writ of the lord the king of *capias ad satisfaciendum*, to be directed to the sheriff of — commanding him, that he take the said *C. D.* if he be found in his bailiwick, and him safely keep, so that he may have his body before the said lord the king at *Westminster*, on — next after — to satisfy the said *A. B.* his damages (or debt and damages) aforesaid; and it is granted to him, &c.; the same day is given to the said *A. B.* at the same place: At which day, before the said lord the king at *Westminster*, comes the said *A. B.* by his attorney aforesaid; and the sheriff, to wit, — sheriff of the county aforesaid, now here returns to the said lord the king at *Westminster* aforesaid, that the said *C. D.* is not found in his bailiwick: Whereupon the said *A. B.* prays another writ of the said lord the king of *capias ad satisfaciendum*, to be directed to the said sheriff of — commanding him in form aforesaid; and it is granted to him, returnable before the said lord the king at *Westminster*, on — next after —; the same day is given to the said *A. B.* at the same place: At which day, before the said lord the king at *Westminster*, comes the said *A. B.* by his attorney aforesaid; and the sheriff hath not sent the said last-mentioned writ, nor hath he done any thing thereupon; whereupon on behalf of the said *A. B.* it is sufficiently testified in the said court of the said lord the king before the king himself, that the said *C. D.* runs up and down and secretes himself in the county of —; and thereupon the said *A. B.* prays the writ of the said lord the king of *testatum capias ad satisfaciendum* against the said *C. D.* to be directed to the sheriff of the said county of — commanding him in form aforesaid; and it is granted to him, re-

turnable before the said lord the king at *Westminster*, on — next after — ; the same day is given to the said *A. B.* at the same place.

I have taken the within-named *C. D.* whose body I have ready, at the day and place within contained, as within I am commanded. (§ 92.)
Return of *cepi corpus*.

The answer of — sheriff.

The within-named *C. D.* is not found in my bailiwick. (§ 93.)
Non est inventus.

The answer, &c.

By virtue of this writ to me directed, I made my mandate to the bailiff of *E. F.* esquire, of his liberty of — who hath the execution and return of all writs and process within the said liberty, and without whom no execution of this writ could be made by me within the same ; which said bailiff hath not given me any answer thereto. (Or, hath answered me thus : I have taken the within-named *C. D.* whose body I have ready, &c.) (§ 94.)
Mandavi ballivo.

The answer, &c.

George the Third, &c. To the sheriff of — greeting : We command you, as before (or as oftentimes before) we have commanded you, that you take, &c. (as in the former *capias ad satisfaciendum*, altering the return.) (§ 95.)
Alias or pluries capias ad satisfaciendum.

George the Third, &c. To the sheriff of — greeting : We command you, that you omit not by reason of any liberty in your bailiwick, but that you enter the same, and take, &c. (as in the former *capias ad satisfaciendum*, altering the return.) (§ 96.)
Non omittas capias ad satisfaciendum.

(§ 97.)
*Testatum capias
 ad satisfaciendum.*

George the Third, &c. To the sheriff of —, greeting: Whereas we lately commanded our sheriff of — that he should take *C. D.* if he should be found in his bailiwick, and him safely keep, so that he might have his body before us at *Westminster*, on a certain day now past, to satisfy *A. B.* of — *l.* (or of a certain debt of — *l.*) which the said *A. B.* lately in our court before us at *Westminster*, had recovered against him, &c. (reciting the former writ, to the words, “whereof the said *C. D.* was convicted, as appeared to us of record”) and our said sheriff of — at that day returned to us, that the said *C. D.* was not found in his bailiwick; whereupon on behalf of the said *A. B.* it is sufficiently testified in our said court before us, that the said *C. D.* runs up and down and secretes himself in your county: Therefore we command you, that you take the said *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster*, on — next after — to satisfy the said *A. B.* of his damages (or debt and damages) aforesaid; and have there then this writ. Witness, &c.

(§ 98.)
*The like, to a
 county-palatine.*

George the Third, &c. To the chancellor of our county-palatine of *Lancaster*, or to his deputy there, greeting: Whereas we lately commanded our sheriff of — that he should take, &c. (reciting the former writ, to the words, “whereof the said *C. D.* was convicted, as appeared to us of record:”) And our said sheriff of — at that day returned to us, that the said *C. D.* was not found in his bailiwick; whereupon on behalf of the said *A. B.* it is sufficiently testified in our said court before us, that the said *C. D.* runs up and down and secretes himself in our said county-palatine: Therefore we command you, that by our writ under the seal of our said county-palatine to be duly made, and directed to the sheriff of the said county-palatine you command the said sheriff, that he take the said *C. D.* if he shall be found in his bailiwick, and him safely keep, so that he may have his body before us at *Westminster*, on — next after — to satisfy the said *A. B.* of his damages (or debt and

damages) aforesaid; and have there then this writ.
Witness, &c.

George the Third, &c. To the sheriff of —, (§ 99.)
greeting: Whereas by our writ we lately com- The like, from
manded our chancellor of our county-palatine of a county-pala-
Lancaster, that by our writ under the seal of our tine.
said county-palatine to be duly made, and directed
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command the said sheriff, that he should take, &c.
(reciting the former writ, to the words, "whereof
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record" :) And our said chancellor of our said
county-palatine at that day returned to us, that by
virtue of the said writ to him directed, he had, by
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tine duly made, and directed to the sheriff of the
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said first-mentioned writ he was commanded; which
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rected, had returned to our said chancellor, that the
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before us at *Westminster*, on — next after —,
to satisfy the said *A. B.* of his damages (or debt and
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Witness, &c.

George the Third, &c. To our chamberlain of (§ 100.)
our county-palatine of *Chester*, or to his deputy The like, from
there, greeting: Whereas by our writ we lately one county-pa-
commanded our chancellor of our county-palatine latine to ano-
of *Lancaster*, that by our writ under the seal of our ther.
said county-palatine to be duly made, and directed
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command the said sheriff, that he should take, &c.
(reciting the former writ, to the words "whereof
the said *C. D.* was convicted, as appeared to us of
record" :) And our said chancellor of our said
county-palatine of *Lancaster* at that day returned

to us, that by virtue of our said writ to him directed, he had by another writ, &c. (as in the last ;) which said sheriff, in answer to the said writ to him directed, had returned to our said chancellor, that the said *C. D.* was not found in his bailiwick ; whereupon on behalf of the said *A. B.* it is sufficiently testified in our said court before us, that the said *C. D.* runs up and down and secretes himself in our said county-palatine of *Chester*: Therefore we command you, that by our writ under the seal of our said county-palatine of *Chester* to be duly made, and directed to the sheriff of the same county-palatine, you command the said last-mentioned sheriff, that he take the said *C. D.* if he shall be found in his bailiwick, and him safely keep, so that he may have his body before us at *Westminster*, on — next after —, to satisfy the said *A. B.* of his damages (or debt and damages) aforesaid : and have there then this writ. Witness, &c.

The like, to a county-palatine, after a removal from the great-sessions by *certiorari*, under the stat. 19 Geo. III. c. 70. § 4.

George the Third, &c. To the chancellor of our county-palatine of *Lancaster*, or to his deputy there, greeting : Whereas we lately commanded our sheriff of — that he should take *C. D.* late of — if he should be found in his bailiwick, and him safely keep, so that he might have his body before our justices of the great sessions, holden at — in and for the county of — on a certain day now past, to satisfy *A. B.* of — l. (or of a certain debt of — l.) which the said *A. B.* lately in our court of great-sessions, holden at — aforesaid in and for the said county of —, before — our chief-justice of — aforesaid, and — our other justice of the said county, had recovered against him the said *C. D.* &c. whereof the said *C. D.* was convicted, as appeared to us of record : And our said sheriff of — at that day returned to our said justices, at the great-sessions aforesaid, that the said *C. D.* was not found in his bailiwick : And afterwards, for certain reasons, we caused the record of the said recovery to be duly certified and removed from and out of our said court of the great-sessions aforesaid, into our court before us at *Westminster*, according to the form of the statute in such case made and provided : And now, on behalf of the said *A. B.* it is sufficiently testified in our said court before us, that the

said *C. D.* runs up and down and secretes himself in our said county-palatine: Therefore we command you, that by our writ under the seal of our said county-palatine to be duly made, and directed to the sheriff of the said county-palatine, you command the said sheriff, that he take the said *C. D.* if he shall be found in his bailiwick, and him safely keep, so that he may have his body before us, on — wheresoever we shall then be in *England*, to satisfy the said *A. B.* of his damages (or debt and damages) aforesaid; and have there this writ. Witness, &c.

George the Third, &c. To the sheriff of —, (§ 101.)
greeting: Whereas by our writ we lately com- *Capias ad satisfaciendum for the residue.*
manded you, that of the goods and chattels, &c. (reciting the *feri facias* :) And you at that day returned to us at *Westminster*, that by virtue of the said writ to you directed, you had caused to be made of the goods and chattels of the said *C. D.* — *l.* parcel of the damages (or debt and damages) aforesaid; which money you had ready at the day and place in the said writ contained, to render to the said *A. B.* for so much of his damages (or debt and damages) aforesaid as by the said writ you were commanded; and that the said *C. D.* had not any other or more goods and chattels in your bailiwick, whereof you could cause to be made the residue of the damages (or debt and damages) aforesaid, or any part thereof: Therefore we command you, that you take the said *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster*, on — next after — to satisfy the said *A. B.* of — *l.* residue of his damages (or debt and damages) aforesaid: and have there then this writ. Witness, &c.

George the Third, &c. To our chancellor of our county-palatine of *Lancaster*, or to his deputy there, greeting: Whereas by our writ we lately commanded you, that by our writ under the seal of our (§ 102.)
The like, to a county-palatine.

said county-palatine to be duly made, and directed to the sheriff of our said county-palatine, you should command the said sheriff, that of the goods and chattels, &c. (reciting the *feri facias* :) And you at that day returned to us, that by virtue of the said writ to you directed, you had by another writ under the seal of our said county-palatine duly made, and directed to the sheriff of our said county-palatine, commanded the said sheriff, as by our said first-mentioned writ you were commanded; which said sheriff, in answer to the said writ to him directed, had returned to you, that by virtue of the said last-mentioned writ, he had caused to be made of the goods and chattels of the said *C. D.* — *l.* part of the damages (or debt and damages) aforesaid, which money he had ready before us, at the day and place in the said last-mentioned writ contained, to render to the said *A. B.* as by that writ he was commanded; and that the said *C. D.* had not any other or more goods or chattels in his bailiwick, whereof he could cause to be made the residue of the damages (or debt and damages) aforesaid, or any part thereof: Therefore we command you, that by our writ under the seal of our said county-palatine to be duly made, and directed to the sheriff of our said county-palatine, you command the said sheriff, that he take the said *C. D.* if he shall be found in his bailiwick, and him safely keep, so that he may have his body before us at *Westminster*, on — next after — to satisfy the said *A. B.* of — *l.* residue of his damages (or debt and damages) aforesaid; and have there then this writ. Witness, &c.

(§ 103.)
Capias ad satisfaciendum against an executor or administrator, after a *devastavit*, and return of *nulla bona* to a

George the Third, &c. To the sheriff of —, greeting: Whereas we lately commanded you, that of the goods and chattels, &c. (reciting the *feri facias de bonis testatoris*, &c.): And you at that day returned to us, that, &c. (reciting the return of *nulla bona testatoris nec propria*, and *devastavit*, for which *vide ante p. 405, 6.*) Whereupon we lately command-

ed you, that of the proper goods and chattels, &c. *feri facias de bonis propriis.* (reciting the *feri facias de bonis propriis*): And you at that day returned to us, that the said *C. D.* had not any of his own proper goods or chattels in your bailiwick, whereof you could cause to be made the damages (or debt and damages) aforesaid: Therefore we command you, that you take the said *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster*, on — next after — to satisfy the said *A. B.* of his damages (or debt and damages) aforesaid; and have there then this writ. Witness, &c.

George the Third, &c. To the sheriff of —, (§ 104.)
greeting: Whereas we lately commanded our sheriff *Testatum capias ad satisfaciendum, in a similar case.* of — that of the goods and chattels, &c. (reciting the *feri facias de bonis testatoris*, &c.): And our said sheriff of — at that day returned to us, that, &c. (reciting the return of *nulla bona testatoris nec propriis*, and *devastavit*, for which *vide ante*, p. 405, 6.) Whereupon we lately commanded our said sheriff of — that of the proper goods and chattels, &c. (reciting the *feri facias de bonis propriis*); And our said sheriff of — at that day returned to us, that, &c. (reciting the return of *nulla bona propria*): Whereupon we commanded our said sheriff of — that he should take, &c. (reciting the *capias ad satisfaciendum*): And our said sheriff of — at that day returned to us, that the said *C. D.* was not found in his bailiwick; whereupon on behalf of the said *A. B.* it is sufficiently testified in our said court before us, that the said *C. D.* runs up and down and secretes himself in your county: Therefore we command you, that you take the said *C. D.* if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us at *Westminster*, on — next after — to satisfy the said *A. B.* of his damages (or debt and damages) aforesaid; and have there then this writ. Witness, &c.

At which day, before the lord the king at *Westminster*, comes the said *A. B.* in his proper person; and — chancellor of our bishoprick of *Durham* aforesaid returns, that by virtue of the said writ to him thereupon directed, he hath commanded the

(§ 105.)
Entry of return of *devastavit*, upon a *feri facias*, *bonis testatoris*, &c. to

the county-palatine of *Durham*, and award of *facias de bonis propriis*; and upon the return of part levied, award of *capias ad satisfaciendum* and *testatum* for the residue.

sheriff of the county of *Durham* aforesaid, that the said sheriff should in all things fully execute the said writ of the said lord the king; which said sheriff answered him, that before the coming of the said writ of the said lord the king to him directed, divers goods and chattels, which were of the said *E. F.* deceased at the time of his death, came to the hands and possession of the said *C. D.* to be administered, which said goods and chattels the said *C. D.* afterwards, and before the coming of the said writ to him, had eloigned, wasted and converted to his own use; wherefore the said sheriff could not cause the said — *l.* for the damages aforesaid, or any part thereof, to be made of the goods and chattels, which were of the said *E. F.* deceased, as by the said writ he was commanded; and the said sheriff further answered the said chancellor, that of the proper goods and chattels of the within-named *C. D.* he had caused to be made the said — *l.* for the costs and charges aforesaid, as he was commanded: Which said — *l.* by the said sheriff brought here into court, by the same court here are delivered to the said *A. B.* in part of the damages aforesaid; therefore let the said sheriff be acquitted of the said — *l.* &c. And as to — *l.* residue of the damages aforesaid, it is considered that the said *A. B.* have execution against the said *C. D.* of the said — *l.* residue of the damages aforesaid, of the proper goods and chattels of the said *C. D.* Therefore it is commanded to the said chancellor of the bishoprick aforesaid, that by the writ of the said lord the king to be duly made, and directed to the sheriff of the said county of *Durham*, he cause it to be commanded, to the sheriff of that county, that of the proper goods and chattels of the said *C. D.* in his bailiwick, he cause to be made the said — *l.* residue of the damages aforesaid; and that he have that money before the said lord the king at *Westminster*, on — next after — to render to the said *A. B.* in form aforesaid; the same day is given to the said *A. B.* there &c. At which day, before the said lord the king at *Westminster*, comes the said *A. B.* in his proper person; and the said — chancellor of the bishoprick aforesaid returns, that by virtue of the said writ to him thereupon directed, he hath commanded the

sheriff of the said county of *Durham*, that the said sheriff should in all things fully execute that writ ; which said sheriff answered him, that the said *C. D.* had no goods or chattels in his bailiwick, whereof he could cause to be made the said — *l.* or any part thereof : Therefore it is commanded to the chancellor of the bishoprick aforesaid, that by the writ, &c. he cause to be commanded, &c. that the said sheriff should take the said *C. D.* if, &c. and him safely keep, so that he might have his body before the said lord the king at *Westminster*, on — next after — to satisfy the said *A. B.* of the said — *l.* residue of the damages aforesaid ; the same day is given to the said *A. B.* there, &c. At which day, before the said lord the king at *Westminster*, comes the said *A. B.* in his proper person ; and the said chancellor of the bishoprick aforesaid returns, that by virtue, &c. he commanded the sheriff, &c. which said sheriff answered him, that the said *C. D.* is not found in his bailiwick ; whereupon on behalf of the said *A. B.* it is testified in our said court here, that the said *C. D.* runs up and down and secretes himself in the county of — : Therefore it is commanded to the sheriff of — that he take the said *C. D.* if, &c. and him safely keep, &c. so that he have, &c. on — next after — to satisfy the said *A. B.* of the said — *l.* residue of the damages aforesaid : At which day, before the said lord the king at *Westminster*, comes the said *A. B.* in his proper person ; and the sheriff of — aforesaid returns, that the said *C. D.* is not found in his bailiwick ; whereupon on behalf of the said *A. B.* it is sufficiently testified in the said court of the said lord the king before the king himself, that the said *C. D.* runs up and down and secretes himself in the county of — : Therefore it is commanded to the sheriff of —, that he take the said *C. D.* if, &c. and him safely keep, so that he have, &c. on — next after — to satisfy the said *A. B.* of the residue of the damages aforesaid, in form aforesaid ; the same day is given to the said *A. B.* there, &c.

George the Third, &c. To the sheriff of — (§ 106.)
greeting : We command you, that you cause *C. D.* *Exigi facias,*
after a *capias*
G g 2

ad satisfaciendum.

late of — to be demanded from county-court to county-court (or if in *London*, from husting to husting), until, according to the law and custom of *England*, he be outlawed, if he doth not appear; and if he doth appear, then that you take him, and cause him to be safely kept, so that you may have his body before us, on — wheresoever we shall then be in *England*, to satisfy *A. B.* of — *l.* (or of a certain debt of — *l.*) which the said *A. B.* lately in our court before us at *Westminster*, recovered against him, &c. (as in a common *capias ad satisfaciendum*, to the words “whereof the said *C. D.* is convicted, as appears to us of record”): And whereupon you returned to us, on, &c. (the return-day of the *capias ad satisfaciendum*,) last past, that the said *C. D.* was not found in your bailiwick; and have there then this writ. Witness *Edward Lord Ellenborough*, &c.

In Dower unde nihil habet.

George the Third, &c. To the sheriff of —, greeting: Whereas *S. H.* widow, who was the wife of *M. H.* deceased, hath lately in our court before —, our justices of the bench at *Westminster*, by our writ of dower, whereof she hath nothing, and by the judgment of the said court recovered against *I. W.* her seisin of the third part of — in the parish of — in your county, as the dower of her the said *S.* by the endowment of the said *M. H.* her late husband, whereof the said *I. W.* is convicted as by the record and proceedings thereof remaining in our said court of the Bench at *Westminster* aforesaid more fully appears: Therefore we command you, that you without delay deliver to the said *S.* seisin of the said third part of the said —, to hold to her in severalty by metes and bounds, according to the force, form, and effect of the said recovery, and how you shall execute this our writ, certify to our justices at *Westminster*, on — returning to us this our writ. Witness, &c.

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